



STATE EXAM FOR NURSING HOME ADMINISTRATORS

The following are the regulations for Nursing Facilities in Oregon on which you will be examined. It is intended solely for the purpose of preparing for your examination and is not inclusive of all the regulations related to nursing facilities in Oregon.

While the following sections are provided to allow you appropriate context they will **NOT** be included in the questions on your examination.

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The examination is a written exam consisting of 50 multiple-choice questions with five possible responses and two points for each question answered correctly. You must achieve a passing score of 84 percent, thus you must answer 42 of the 50 questions correctly. Many answers are taken verbatim from the regulations so you are encouraged to prepare accordingly.

The examination contains many questions that ask you to identify an incorrect statement from five statements. For example a question may state, "Four of the statements below are in agreement. Identify the one that is **NOT**." Please refer to the Sample Test Questions provided on the following page.

SAMPLE TEST QUESTIONS

1. Four of the statements below are in agreement with OAR 411-085-0310 (Residents' Rights: Generally). Identify the one which is **NOT**.

Each resident and his/her legal representative, as appropriate, has the right to:

- A. Be transferred or discharged only in accordance with the Department's transfer rules.
 - B. Involuntary reassignment of rooms may be made after reasonable advance notification and preparation. "Reasonable advance notification" means no less than 14 days.
 - C. Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be provided within 5 business days (days excluding Saturdays, Sundays and state holidays).
 - D. Participate in social, religious, and community activities at the discretion of the resident.
 - E. Be fully informed of the facility policy on possession of firearms within the facility.
2. A Quality Assessment and Assurance Committee must develop and adopt facility policies that shall be evaluated _____ and rewritten as needed.
- A. Weekly
 - B. Monthly
 - C. Quarterly
 - D. Every six months
 - E. Annually
3. Four of the statements below are correct, identify the one which is **NOT**:
- A. Each licensed nursing facility shall be under the supervision of a full-time Oregon licensed nursing home administrator.
 - B. The administrator shall comply with the rules of the Board of Examiners of Nursing Home Administrators.
 - C. The nursing facility licensee shall notify the Division within 30 days from the date the administrator leaves employment at the facility,
 - D. Each facility shall have a director of nursing who shall be full-time (40-hours per week).
 - E. The DNS may serve as the charge nurse only if the facility has a licensed bed capacity of 60 or less and does not provide care for residents requiring skilled nursing care.
4. Any drug removed from the Emergency Medication Kit shall be covered by a prescription and signed by the _____ within _____.
- A. Certified Medication Aide; 24 hours
 - B. Physician; 72 hours
 - C. Administrator; 48 hours
 - D. Pharmacist; 7 days
 - E. Medical Director; 14 days

ANSWERS

1. C – 411-085-0310(16); 2. E – 411-085-0210(1); 3. C – 411-086-0010; 411-086-0020; 4. B – 411-086-0260(6)(c)

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DIVISION 70 – MEDICAID NURSING FACILITIES

NOTE: Division 70 citations provided herein do not include all sections in the Division. For a full listing of the text for Division 70 go to http://arcweb.sos.state.or.us/rules/OARS_400/OAR_411/411_070.html

411-070-0095: Personal Incidental Funds

(1) Each Medicaid resident is allowed a monthly amount for personal incidental needs. For purposes of this rule, personal incidental funds (PIFs) include monthly payments as allowed and previously accumulated resident savings.

(2) Facility Responsibility. The facility must assure that residents for whom the nursing facility is holding, managing, spending, or disbursing PIFs in the resident's own best interest; that neither PIFs nor funds from family or friends be used for services, supplies and equipment included in the facility's all-inclusive rate; or for items for which reimbursement through another source is available.

(a) The facility must not charge for items included in the all-inclusive rate or for other items or services for which funding can be provided through the Medicaid agency or another non-resident source.

(b) The facility must hold, safeguard and account for a resident's personal incidental funds if he or she requests such management; or if the case manager requests on Form SDS 0542 that the facility perform such management.

(c) The facility must maintain a record of the request by the resident, case manager or resident representative on Form SDS 0542, covering all funds it holds or manages for residents.

(d) The facility must manage resident funds in a manner in the resident's best interest.

(A) The facility must not charge the resident for holding, disbursing, safeguarding, accounting for, or purchasing from personal incidental funds. Charges for these services are included in the Nursing Facility Financial Statement, Form SPD 35 or 35A and are considered allowable costs reimbursable through the all-inclusive rate.

(B) The cost for items charged to personal incidental funds must not be more than the actual purchase price charged by an unrelated supplier.

(C) The facility may not charge Department clients or other sources for items or services furnished if all residents receiving such items or services are not charged. Charges must be for direct, identifiable services or supplies furnished individual residents. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., is not allowed. Charges will be made only after services are performed or items are delivered.

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(D) The facility must keep any funds received from a resident for holding, safeguarding and accounting separate from the facility's funds.

(E) The nursing facility may request technical assistance from SPD/Type B AAA staff, however, responsibility for managing resident funds in the resident's best interest remains with the facility.

(F) When a facility is a resident's representative payee, it must fulfill its duties as representative payee in accordance with applicable federal regulations and state regulations that define those duties.

(G) Facilities holding resident funds must be insured to cover all amounts held in trust.

(3) Delegation of PIF Authority:

(a) The resident may manage his or her personal financial resources, including PIFs, and may authorize another person or the facility to manage them. The facility must, upon written authorization by the resident or representative, or case manager on the client's behalf, if appropriate, accept responsibility for holding, safeguarding, spending and accounting for these funds;

(b) At the time of admission, the facility must assure that the resident or representative delegating such responsibility to the facility completes Form SDS 0542, Designation of Management of Personal Incidental Funds, and the facility will sign the form acknowledging responsibility. The facility will retain the original in the resident's personal incidental fund records, with copies to the resident and the Department;

(c) The resident wishing to change delegation must do so by completing a new Form SDS 0542, that must be available at the facility; and

(d) The Department cannot be delegated to account for the resident's personal incidental funds.

(4) Resident Admission:

(a) The facility must provide each resident or resident representative with a written statement at the time of admission that:

(A) States the facility's responsibility to pay for all services, supplies, and facility equipment required for care (basic rate);

(B) Lists all services provided by the facility that are not included in the facility's basic rate;

(C) States that there is no obligation for the resident to deposit funds with the facility;

(D) Describes the resident's right to select how personal funds will be handled. The following alternatives must be included:

(i) The resident's right to receive, retain, and manage his or her personal funds or have this done by a legal guardian, or conservator;

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(ii) The resident's right to delegate on the SDS 0542 another person to act for the purpose of managing his or her personal funds; and

(iii) The facility's obligation, upon written authorization by the resident or representative, to hold, safeguard and account for the resident's personal funds in accordance with these rules;

(E) States that any facility charge for this service is included in the facility's basic rate, and that the facility cannot charge for PIF management or charge residents more than the actual purchase price of items at an unrelated supplier;

(F) States that the facility is permitted to accept a resident's funds to hold, safeguard and account for, only upon the written authorization of the resident or representative, or if the facility is appointed as the resident's representative payee; and

(G) States that if the resident becomes incapable of managing his or her personal funds and does not have a representative, the facility is required to manage his or her personal funds if requested on the Form SDS 0542 by the case manager.

(b) The facility must obtain documentation on the Form SDS 0542 of resident intention to manage own funds, or resident, resident representative, or case manager delegation to another individual or the facility.

(5) Resident Account Records:

(a) The facility will maintain a Resident Account Record (Form SDS 713), on an ongoing, day-to-day basis, for each resident for whom the facility is holding personal incidental funds. Each receipt or disbursement of funds must be posted to the resident's account. Posting from supporting documentation must be done within seven days after the transaction date;

(b) The resident account record must show in detail with supporting documentation all monies received on behalf of the resident and the disposition of all funds so received. Persons shopping for residents must provide a list showing description and price of items purchased, along with payment receipts for these items;

(c) Personal incidental fund individual resident accounts must be reconciled and listed by the facility at the end of each calendar month;

(d) Personal incidental fund petty cash accounts must be reconciled within ten days of receipt of the bank statement;

(e) The facility must maintain a monthly list that separately lists the petty cash and savings account balances for each resident for whom the facility is managing personal incidental funds;

(f) Records and supporting documentation must be retained for at least three years following the death or discharge of the resident;

(g) Accumulations of \$50 or more:

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(A) The facility must, within 15 days of receipt of the money, deposit in an individual interest-bearing account any funds held in excess of \$50 for an individual resident, unless this money is being managed in a Trust and Agency Account by Seniors and People with Disabilities.

(B) The account must be individual to the resident, must be in a form that clearly indicates that the facility does not have an ownership interest in the funds, and must be insured under federal or state law; and

(h) Accumulations of Under \$50:

(A) The facility may accumulate no more than \$50 of a resident's funds in a pooled bank account or petty cash fund which must be separate from facility funds.

(B) The interest earned on any pooled interest-bearing account containing residents' petty cash must be either prorated to each client on an actual interest-earned basis, or prorated to each client on the basis of his or her end-of-quarter balance.

(6) Resident Rights:

(a) The resident must be allowed to manage his or her own funds, or to delegate their management to another, unless the resident has been determined to be incompetent by a court of law. A resident who was not adjudicated incompetent may always decide how to spend his or her own funds. Facility staff delegated to manage PIFs must follow guidelines outlined in this rule and other state and federal laws and regulations that may apply in order to assure that decisions not made by the resident are made in his or her best interest;

(b) The resident, family or friends has the right to be free from solicitation from the facility to purchase items that are included in the facilities daily rate;

(c) The resident must not be charged PIFs for any item included in the facility's daily rate unless the facility can show at least one of the following:

(A) The resident made an informed decision to purchase the item, understanding that a similar and appropriate item is included in the daily rate;

(B) The family requested that the facility purchase the item, understanding that a similar and appropriate item is included in the daily rate; or

(C) The resident is not currently able to make an informed decision to purchase the item, but did so prior to current incapacity;

(d) The resident, family or friends must not be charged for any drug designated by the Food and Drug Administration as less-than-effective unless it can show that both the physician and the resident made an informed decision to continue use of the drug;

(e) Prior to purchasing an item that is included in the facility's daily rate or is over \$50, the facility must consult with the SPD/Type B AAA case manager;

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(f) The facility must not charge resident PIFs for any item or service that benefits the facility, facility staff or relatives or friends of facility staff, unless it can show that the resident made an informed decision to purchase the item or service; and

(g) When the facility or SPD is of the opinion that a resident is incapable of managing personal funds and the resident has no representative, the facility must refer the resident to the case manager in the local SPD/Type B AAA, who will consult with the resident regarding resident preference. If the attending physician agrees, as documented on the Form SDS 544, Physician's Statement of Resident's Capacity to Manage Funds, that the resident is incapable of handling funds, the case manager will attempt to find a suitable delegate to manage the resident's funds. If no delegate can be found, the facility must assume the responsibility. If the resident disagrees with the designation of a delegate, the designation cannot be made, and the client retains the right to manage, delegate, and direct use of his own money, if not adjudicated incompetent.

(7) Access to Funds, Records:

(a) The facility must provide each resident or delegate reasonable access to his or her own financial records and funds;

(b) The facility must provide a written statement, at least quarterly, to each resident, delegate, or a person chosen by the resident to receive the statement. The quarterly statement must reflect separately all of the resident's funds that the facility has deposited in an interest-bearing account plus the resident funds held by the facility in a petty cash account or other account. The statement must include at least the following:

(A) Identification number and location of any account in which that resident's personal funds have been deposited;

(B) Balances at the beginning of the statement period;

(C) Total deposits with source and withdrawals with identification;

(D) Interest earned, if any;

(E) Ending balances; and

(F) Reconciliation.

(c) The facility must provide a copy of the quarterly accounting to the local SPD/Type B AAA within 15 days following the end of the calendar quarter on Form SDS 713, with a copy to the resident or an individual delegated by the resident to receive the copy;

(d) The resident or delegate must have access to funds in accordance with OAR 411-085-0350;

(e) The facility must, within ten business days of the resident's transfer or discharge, or appointment of a new delegate as documented on the Form SDS 0542, return to the resident or the delegate all of the resident's personal funds that the facility has received for holding,

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safeguarding, and accounting, and that are maintained in a petty cash fund or individual account, as well as a final accounting.

(8) Change of Ownership:

(a) The facility must give each resident or delegate a written accounting of any personal funds held by the facility before any transfer of facility ownership occurs, with a copy to the local SPD/Type B AAA;

(b) The facility must provide the new owner and the local SPD/Type B AAA with a written accounting of all resident funds being transferred and obtain a written receipt for those funds from the new owner.

(9) Local SPD/Type B AAA Responsibility:

(a) Monitor receipt of SDS 713 forms and review them quarterly for appropriateness of expenditures;

(b) Monitor client resources for resources over the current Medicaid limit;

(c) For residents incapable of managing own PIFs and having no one to delegate to do so, attempt to determine resident wishes, seek physician input on the physician statement, and find a delegate, delegating the facility if necessary and not in conflict with resident wishes;

(d) Notify the facility of inappropriate expenditures and report uncorrected problems to SPD Central Office and assist residents in obtaining legal counsel; and

(e) Track expensive or reusable items purchased for clients through personal incidental funds or by the Department and assure their appropriate use after resident death.

(10) Death of Resident:

(a) Within five business days following a resident's death, the facility must send a written accounting of the resident's personal incidental funds to the executor or administrator of the resident's estate. If a deceased resident has no executor or administrator, the facility must provide the accounting to:

(A) The resident's next of kin;

(B) The resident's representative;

(C) The clerk of probate court of the county in which the resident died; and

(D) Estate Administration Unit, Seniors and People with Disabilities, P.O. Box 14021, Salem, OR 97309-5024.

(b) Within five business days following a resident's death, the facility must:

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(A) Send a written accounting of the resident's personal incidental funds and a listing of resident personal property, including wheelchairs, television sets, walkers, jewelry, etc., to the local Estate Administration Unit, SPD;

(B) Hold personal property for 90 days, unless otherwise instructed by the Estate Administration Unit, SPD; and

(C) Comply with the laws of Oregon regarding disbursement of client personal incidental funds, and any advance payments, or contact the Estate Administration Unit, SPD, for more detailed instructions.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 414.065 Stats. Implemented: ORS 410.070 & 414.065

411-070-0100: Audit of Personal Incidental Funds

(1) Records Available to Department. All account records and expenditure receipts for the resident's personal incidental funds must be available in the facility for audit and inspection by representatives of the Department of Human Services.

(2) Department Audits. Audits of a provider's cost reports, financial records and other pertinent documents may be made by the Department to verify that the provider is complying with Federal regulations and State Administrative Rules regarding protection of residents' funds. Copies of the provider's records may be removed from the facility.

(3) Discrepancies. Any discrepancies in the utilization of personal incidental funds brought to the attention of the case manager will be discussed with the facility. If the discrepancy cannot be resolved, the Department will assist the resident in finding an attorney to represent them or bring the situation to the attention of the local district attorney.

(4) Abuse of Funds. Abuse of resident's personal incidental funds or failure to comply with SPD personal incidental funds policy will be considered by the Department in deciding if a provider's agreement will be continued or renewed.

Stat. Auth.: ORS 410.070 & 414.065 Stats. Implemented: ORS 410.070 & 414.065

411-070-0105: Resident Property Records

(1) Current Records. The facility must maintain a current, written record for each resident that includes written receipts for all personal possessions deposited with the facility.

(2) Availability. The property record must be available to the resident and the resident's representative.

(3) Personal Property. The resident's private property must be clearly marked with his or her name.

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(4) Department Audit. These records are subject to the same audit criteria as all personal incidental funds in OAR 411-070-0100.

(5) Removal from Facility. The Department may remove copies of these records from the facility.

Stat. Auth.: ORS 410.070 & 414.065 Stats. Implemented: ORS 410.070 & 414.065

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DIVISION 85 – NURSING FACILITIES GENERALLY

411-085-0000: Statement of Purpose

The purpose of these rules (OAR 411, divisions 85-89) is to establish requirements for nursing facilities that promote quality care and maximization of personal choice and independence for residents. Whenever possible, care shall be directed toward returning the resident to his/her own residence or to the least restrictive alternative environment within the shortest time possible.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

411-085-0005: Definitions

As used in OAR 411, divisions 70 and 85-89, unless the rule requires otherwise, the following definitions apply:

(1) "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 person 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, which failure results in physical harm or unreasonable discomfort or serious loss of human dignity;

(c) Sexual contact, including fondling, with a resident 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 person; or borrowing resident funds; or 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(s) 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; or

(h) Involuntary seclusion for convenience or discipline.

(2) "Abuse complaint" means any oral or written communication to The Department, one of its agents or a law enforcement agency alleging abuse.

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(3) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercise and that are designed to maintain or improve physical and mental well-being and social skills.

(4) "Applicant" means the person or persons 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 the sole proprietor, each partner in a partnership, or the corporation that operates the nursing facility on behalf of the nursing facility business owner.

(5) "Area Agency on Aging" or "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 Division programs.

(6) "Assessment" means a written evaluation of the resident's abilities, condition and needs based upon resident interview, observation, clinical and social records and other available sources of information.

(7) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and provide reasonable safety, all consistent with the preferences of the resident.

(8) "Certified Medication Assistant" or "Certified Medication Aide" means a certified nursing assistant who has successfully completed an Oregon State Board of Nursing approved training program for the administration of non-injectable medication.

(9) "Certified Nursing Assistant" or "Nurse Aide" means a person who has been certified as a nursing assistant pursuant to ORS Chapter 678 and the rules adopted thereunder.

(10) "Change of Ownership" and "Change of Operator" means a change in the person or entity that owns the facility business and/or a change in the individual or entity responsible for the provision of services at the facility. Events that change ownership include, but are not limited to the following:

(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;

(f) Any other event that results in a change of the operating entity.

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- (11) "Day Care Resident" means a person who receives services and care in a nursing facility for not more than 16 hours per day and who is not bedfast.
- (12) "Department" means Seniors and People with Disabilities of the Department of Human Services.
- (13) "Drug(s)" has the same meaning set forth in ORS Chapter 689.
- (14) "Entity" means "person" as defined by these rules.
- (15) "Establish a Nursing Facility" or "Maintain a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.
- (16) "Facility" or "Nursing Facility" means an establishment that is licensed by The Department as a Nursing Facility.
- (17) "Health Care Facility" means a health care facility as defined in ORS 442.015, but also includes residential care facility as defined in ORS 443.400 and adult foster home as defined in ORS 443.705.
- (18) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of The Department thereunder.
- (19) "Incident of Ownership" means:
- (a) An ownership interest; or
 - (b) An indirect ownership interest; or
 - (c) A combination of direct and indirect ownership interest.
- (20) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. This term includes an ownership interest in an entity that has an indirect ownership interest in another entity.
- (21) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who will or may be cared for and treated on an overnight basis.
- (22) "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 and complaint investigation.
- (23) "Legal Representative" means Attorney at Law, person holding a general power of attorney or special power of attorney for health care, guardian, conservator, or any person appointed by a court to manage the personal or financial affairs of the resident or person or agency legally responsible for the welfare or support of the resident, other than the facility.
- (24) "Licensed Nurse" means a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

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(25) "Licensed Practical Nurse (LPN)" means a person licensed under ORS Chapter 678 to practice practical nursing.

(26) "Licensee" means the applicant(s) to whom a nursing facility license has been issued.

(27) "Local Designee of The Department" means the local unit of Seniors and People with Disabilities or the Type B Area Agency on Aging.

(28) "Long Term Care Facility" means nursing facility.

(29) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(30) "Management" or "Control Interest" means 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 an interest as an officer or director of an institution, organization or agency organized as a corporation.

(31) "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 (e.g., rooms that are proposed to be licensed as resident rooms, but that are not currently licensed as nursing facility resident rooms);

(d) A major alteration to an existing building, additions, conversions in use; or

(e) Renovation or remodeling of existing buildings.

(32) "NFPA" means National Fire Protection Association.

(33) "Nurse Practitioner" means a person certified under ORS Chapter 678 as a nurse practitioner.

(34) "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, and analysis or evaluation of that data, and utilization of available resource information.

(35) "Nursing Assistant" or "Nurse Aide" means a person who assists licensed nurses in the provision of nursing care services. "Nursing assistant" includes, but is not limited to, certified nursing assistant, certified medication assistant and persons enrolled in a CNA course.

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(36) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(37) "Nursing Facility" means an establishment with permanent facilities that include inpatient beds; providing 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 person. "Nursing facility" shall not be construed to include facilities licensed and operated pursuant to any Oregon Revised Statute other than ORS 441.020(2).

(38) "Nursing Facility Law" means ORS Chapter 441 and the Oregon Administrative Rules for nursing facilities adopted pursuant thereto.

(39) "Nursing Home" means nursing facility.

(40) "Nursing Home 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.

(41) "Nursing Staff" means registered nurses, licensed practical nurses and nursing assistants providing direct resident care in the facility.

(42) "Owner" means a person with an ownership interest.

(43) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(44) "Person" means an entity, including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock, companies and insurance companies, a state, or a political subdivision or instrumentality including a municipal corporation, as defined in ORS 442.015.

(45) "Pharmacist" has the same meaning set forth in ORS 689.005.

(46) "Pharmacy" has the same meaning set forth in ORS 689.005.

(47) "Physician" means a person licensed under ORS Chapter 677 as a physician.

(48) "Physician's Assistant" means a person registered under ORS Chapter 677 as a physician assistant.

(49) "Podiatrist" means a person licensed under ORS Chapter 672 to practice podiatry.

(50) "Prescription" has the same meaning set forth in ORS 689.005.

(51) "Public or Private Official" means physician, including any intern or resident; LPN or RN; employee of the Department of Human Services, AAA, County Health Department, Community Mental Health Program, nursing facility; person who contracts to provide services to a nursing

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facility; peace officer; clergyman; registered social worker; physical therapist; legal counsel for resident or guardian or family member of the resident.

(52) "Registered Nurse (RN)" means a person licensed under ORS Chapter 678.

(53) "Rehabilitative Services" means specialized services by a therapist or a therapist assistant to a resident to attain optimal functioning including but not limited to, physical therapy, occupational therapy, speech and language therapy, and audiology.

(54) "Relevant evidence" means factual information that tends to either prove or disprove the following:

- (a) Whether abuse or other rule violation(s) occurred;
- (b) How abuse or other rule violation(s) occurred; or
- (c) Who was involved in the abuse or other rule violation(s).

(55) "Resident" means an individual who has been admitted, but not discharged, from the facility.

(56) "Restorative Services" or "Restorative Nursing" means those measures provided by nursing staff and directed toward re-establishing and maintaining the resident to his/her fullest potential.

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

(58) "Significant Other(s)" means individual(s) designated by the resident or by the court to act in behalf of the resident. If the resident is not capable of such designation, and there is no court-appointed individual, then significant other(s) shall mean family member(s) or friend(s) who has(have) 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 on behalf of a resident that they are not entitled to make.

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

(60) "Trusteeship Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a Trustee for a Nursing Facility or a Residential Care Facility.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 441.055
441.630, 441.637 & 441.650

Stats. Implemented: ORS 441.055, 441.615,

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411-085-0010: Issuance of License

(1) License Required. No person acting individually or jointly with any other person shall establish, conduct, maintain, manage, or operate a nursing facility without a license from The Department.

(2) Not Transferable. Each nursing facility license issued by The Department applies only to person or persons named on the license. The license is not transferable or assignable. The license is valid only for the specific premises designated on the license and for the time period specified on the license.

(3) Certificate of Need. A license will not be issued for a new facility, an expanded facility or a facility offering new services unless the State Office of Health Policy has issued a certificate of need for said facility or service, or has determined that a certificate of need is not required.

(4) Application for Initial Licensure and License Renewal.

(a) The application(s) shall be on a form or forms provided by The Department and shall include all information requested by The Department including, but not limited to, identity and financial interest of any person, including stockholders who have an incident of ownership in the applicant representing an interest of ten percent or more or ten percent of a lease agreement for the facility.

NOTE: Facilities applying for Medicaid and/or Medicare certification are required by federal law to identify applicants representing a five percent or more interest.

(b) If the owner of the nursing facility business is a different entity from the operator of the nursing facility, an application for licensure will be required from both the operator and the owner. Only one license fee is required. Each application must be signed and dated by a legally authorized representative of the entity submitting the application. Name(s) of owner(s)/operator(s) will appear on the license.

(c) The application will require the identification of any person who has ten percent incident of ownership, direct or indirect, in a pharmacy or in any business that provides services or supplies to nursing facilities. If any such person(s) exist(s), the application must identify the person, the name and address of the pharmacy or business.

(d) The application will identify the number of beds the facility is then presently capable of operating considering existing equipment, ancillary service capability and the physical requirements as specified within these rules (OAR 411, divisions 85-89). The number of beds requested to be licensed must not exceed the number identified on the license to be renewed unless prior approval has been issued by The Department or a certificate of need has been issued when required pursuant to ORS Chapter 442.

(e) The application will include a floor plan showing the location of each bed and the dimensions and room number of each room in which a bed is located. The plan will also show the location of dining and activities areas, shower and tub rooms, toilet rooms, clean and dirty utility rooms, therapy services areas, laundry areas and dietary service areas. After the first filing, plans need only be submitted when changes in the information required in this subsection occur and when requested by The Department.

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- (f) The application must include a copy of all leases, management and ownership of the facility.
 - (g) The application must list all states in which the licensee or persons having a ten percent or more incident of ownership in the facility currently or previously is/has been licensed to provide long-term care.
 - (h) If a renewal is desired, the licensee must make application at least 45 days prior to the expiration date of the existing license.
 - (i) The license fee must accompany the application.
 - (j) If the applicant fails to provide complete and accurate information on the application, The Department may deny or revoke the license if it determines the missing or corrected information is needed to determine if a license should be granted.
 - (k) An application will not be considered to be complete until all requested information and signatures have been provided.
 - (l) Each application for a new license (excludes license renewal) must include a completed and signed credit and criminal record check authorization form for the applicant(s), and for each person with ten percent incident of ownership in the applicant.
 - (m) Applicants for license renewal must provide The Department with a completed and signed credit and criminal record check authorization form for the applicant(s), and for each person with incident of ownership in the applicant, when required by The Department.
 - (n) Applications must state whether or not the applicant(s), and persons with incident of ownership in the applicant, have ever been convicted of a crime associated with operation of a health care facility or agency under federal law or the laws of any state.
 - (o) Applicants must provide such other information and documentation as The Department may reasonably require for proper administration of these rules, including, but not limited to, information about ownership interest in other business enterprises, if relevant.
 - (p) The Department will issue the license or issue a denial of licensure within 60 days of receipt of the completed application.
- (5) Demonstrated Capability:
- (a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of The Department that the applicant is capable of providing care in a manner consistent with the requirements of these rules (OAR 411, divisions 85-89);
 - (b) The Department may consider the background and qualifications of any person owning ten percent or more interest in the nursing facility operation when determining whether an applicant may be licensed;

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(c) The Department may consider the applicant's history of compliance with Division rules and orders, including the history of compliance of each person with a ten percent or more incident of ownership in the applicant;

(d) Any person with a past or present interest of ten percent or more incident of ownership in any nursing facility operation will be considered responsible for acts occurring during and relating to the operation of the nursing facility for the purpose of licensing.

(6) Separate Buildings. Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same ownership or management.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.015, 411.055,

441.615 & 412.315

411-085-0013: New Applicant Qualifications

For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds ten percent or greater incident of ownership in the facility. Applicants for licensure (excluding license renewal, but including all changes of ownership) must meet the following criteria:

(1) **CRIMINAL HISTORY.** Each applicant must complete a Criminal History Clearance conducted by The Department in accordance with OAR 410, division 007. The Department conducts the fitness determination. If determined "unfit," applicants may appeal as described in OAR 410-007-0330.

(2) **PERFORMANCE HISTORY.** Each applicant must:

(a) Be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill or disabled persons and was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years;

(b) Be free of incident of ownership history in any nursing facility in any state that was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years;

(c) Be free of history of termination of licensure as a nursing facility administrator or health care provider during the past five years;

(d) Failure to demonstrate required performance history may result in The Department's denial of a license.

(3) **FINANCIAL HISTORY.** Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years;

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(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, or other costs necessary for facility operation, during the past five years;

(c) Have a record of good credit as evidenced by a Division credit check;

(d) Submit proof of fiscal responsibility, including an auditor's certified financial statement and other verifiable documentary evidence of fiscal solvency, documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not be considered to be "liquid assets," but may be considered to be "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A joint escrow account with SPD;

(C) A performance bond; or

(D) Any other method satisfactory to SPD.

(e) Provide a pro forma (revenues, expenditures and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) **EXPERIENCE.** If an applicant does not have experience in the provision of nursing facility care, the applicant must employ the services of a consultant with experience in the provision of nursing facility care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of The Department. Costs incurred for such consulting services are not an allowable cost for Medicaid reimbursement.

(5) **DEMONSTRATION OF RIGHT TO PROPERTY/BUSINESS.** The applicant must demonstrate that they have the legal right to possess the nursing facility property and operate the nursing facility business.

EXAMPLE: If purchasing the property, the applicant must include documentation demonstrating clear title and current right to possess the property. If leasing the facility property, or planning to operate it under a management agreement, the applicant must provide all legal documents needed to demonstrate the right to possess the property and operate the business.

Stat. Auth.: ORS 410.070 & 441.055
441.615

Stats. Implemented: ORS 441.025, 441.055 &

411-085-0015: License Expiration, Termination of Operation, License Return

(1) **EXPIRATION.** Unless revoked or terminated earlier, or issued for a shorter specified period, each license to operate a nursing facility expires on December 31 following the date of issue.

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(2) **TERMINATION OF OPERATION.** Except as otherwise provided in this rule, if facility operation is discontinued for any reason, the license is expired. The licensee has appeal rights under ORS Chapter 183.

(3) **INACTIVE LICENSE.** When the licensee proposes to replace an existing (original) licensed nursing facility with a new building, The Department may grant the licensee an inactive license for up to 24 months after closure of the original facility (departure of the last resident) under the following conditions:

- (a) The existing facility must not meet the physical environment requirements for new construction (division 87 of OAR 411);
- (b) The licensee must comply with the Health Division's Certificate of Need process, including the physical environment requirements for new construction;
- (c) The licensee must submit to The Department a written request for an extension to continue the license, and must submit an application for license renewal and the license fee prior to the beginning of each calendar year;
- (d) The licensee must comply with plan review (OAR 411-087-0010(3)) and all other applicable requirements; and
- (e) The licensee's written request must include information that assures The Department that the new facility will provide an improved quality of care that is needed in the community and that is determined by The Department to be in the public's interest.
- (f) The licensee must provide written notice of intent to apply for an inactive license at least 30 days prior to closure of the original building. This notice must be provided to The Department and every licensed nursing facility, assisted living facility and residential care facility within 20 miles of the proposed new building site.
- (g) The licensee must provide a minimum of two written progress reports to The Department regarding the status of the new building.
 - (A) The first report must be received by The Department between six months and nine months after the original facility is closed.
 - (B) The second report must be received by The Department between 18 months and 21 months after the original facility is closed.

(4) **EXTENSION.** If the licensee fails to open the new building within 24 months of the closure of the original facility, The Department may extend the inactive license for an additional 18 months. The licensee must submit written request to The Department for an extension prior to expiration of the inactive license. The following must be included in the request for extension:

- (a) **Notice to Nearby Facilities.** A statement certifying that the licensee has made reasonable attempt to provide written notice to each nursing, assisted living and residential care facility within 20 miles of the site of the proposed facility of the intent to request an extension. Upon

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request, The Department will provide a list of the names and addresses of all nursing, assisted living and residential care facilities in the state.

- (b) Site Plan. A completed site plan that has been submitted to the local jurisdiction (city or county planning agency).
- (c) Architectural Drawings. Working architectural drawings that have been stamped or prepared by a licensed architect.
- (d) Building Site. Evidence that the land proposed for the new building is under control of the licensee.
- (e) Local Jurisdiction Communication. Evidence of continued contact with the local jurisdiction.
- (f) Financial Commitment. Evidence of financial commitments towards completion of the project, including proof of lender commitments and cash on hand sufficient to complete the construction.
- (g) Construction Contracts. Construction contracts or other evidence showing that the project will be completed prior to the expiration of the extended inactive license.

(5) RETURN OF LICENSE. Each license certificate must be returned to The Department immediately upon issuance of a final order revoking or suspending the license. If a license is terminated voluntarily or involuntarily because operation has been discontinued, the license certificate must be immediately returned to The Department.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.025, 441.055 & 441.615

411-085-0020: License Fees, Special Assessment

(1) LICENSE APPLICATION FEES. License application fees may not be prorated for a partial year. The annual fee is:

- (a) For 1-15 beds: \$120
- (b) For 16-49 beds: \$ 175
- (d) For 100-199 beds: \$ 450
- (e) For 200 or more beds: \$ 580

(2) SPECIAL TRUST FUND ASSESSMENT:

(a) Whenever The Department determines that the balance in the Trusteeship Fund created by Oregon statute is less than the amount established by the statute, a special assessment is levied against all licensees. The special assessment will be pro-rated (based upon the annual fee of the licensee) in order to result in collection of an amount that will result in a Trust Fund balance of no more than the amount set by the statute. In no event may the special assessment

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be greater than the annual license fee. The special assessment may be levied only once each calendar year;

(b) Monies are disbursed from the fund in accordance with ORS 441.277-441.323.

Stat. Auth.: ORS 410.070 & 441.055
441.303 & 441.615

Stats. Implemented: ORS 441.020, 441.055,

411-085-0025: Change of Ownership or Operator/Cessation of Business

(1) PENDING CHANGE OF OWNERSHIP/MANAGEMENT. When a change of ownership or a change of operator is contemplated, the licensee and the prospective licensee must each notify The Department in writing of the contemplated change. The change of ownership/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 notification 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.).
- (e) A complete, signed nursing facility application from the prospective licensee.

(2) EFFECTIVE DATE OF CHANGE. The prospective licensee will not assume possession or control of the facility until after the prospective licensee has been notified by The Department that its license application has been approved.

(3) LICENSEE RESPONSIBLE. The licensee(s) is/are responsible for operation of the facility and resident care provided therein until a new license is issued to a new owner or manager or the facility operation is closed.

(4) 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 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.

EXCEPTION: When the closure date is established by The Department.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

411-085-0030: Required Postings

(1) PUBLIC NOTICES:

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(a) Content. Public notices required to be posted include:

(A) The most recent licensing and, if applicable, certification survey report(s);

(B) The placard provided by The Department that includes information on reporting of abuse and summarizes the nursing facility rules. In addition to the location specified in subsection (1)(b) of this rule, this placard must also be prominently and conspicuously posted in close proximity to each nursing station and in the area(s) where residents are admitted;

(C) The current week's menu and activities schedule;

(D) The facility license and the administrator's license. (It is recommended the titles and names of the administrator, the DNS, the Social Services Director, the Activities Director, the Dietary Services Supervisor and the RN Care Manager(s) are also posted);

(E) Waivers received from The Department pursuant to OAR 411-085-0040 and 411-087-0030, and waivers of any federal regulations; and

(F) Any other notice relevant to residents or visitors required by state or federal law.

(b) Location. The facility will designate a specific area where notices listed in subsection (1)(a) of this rule will be posted and that:

(A) Is routinely accessible and conspicuous to residents and visitors, including those in wheelchairs; and

(B) Provides sufficient space for prominent, conspicuous display of each notice.

(2) NOTICES FOR STAFF. The facility must post the names of registered nurses as required by OAR 411-086-0020 and the physician(s) available for emergencies as required by OAR 411-086-0200 at each nursing station.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.067 &

441.615

411-085-0040: Alternative Methods, Waivers

(1) APPLICATION. While all nursing facilities are required to maintain compliance with The Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications, or the conducting of pilot projects or research. Requests for waivers to the rules must:

(a) Be submitted to The Department in writing;

(b) Identify the specific rule for which a waiver is requested;

(c) Describe the special circumstances relied upon to justify the waiver;

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(d) Describe what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(e) Demonstrate that the proposed waiver is desirable to maintain or improve the quality of care for the residents, will maintain or improve resident potential for self-direction and self-care, and will not jeopardize resident health and safety; and

(f) Identify the proposed duration of the waiver.

(2) APPROVAL PERIOD. Upon finding that the licensee has satisfied the conditions of this rule, The Department may grant a waiver for a specified period of time, not to exceed a period of three years.

(3) REVOCATION. The Department may revoke any waiver or variance issued by The Department immediately upon finding that the facility's operation under the waiver or variance has endangered, or if continued would endanger, the health or safety of one or more residents.

(4) IMPLEMENTATION. The facility may implement a waiver only after written approval from The Department.

Stat. Auth.: ORS 410.070 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-085-0050: Hospital-Based Nursing Facilities

Facilities that are physically connected to and operated by a licensed general hospital will be considered to be in compliance with the following Oregon nursing facility requirements:

(1) Requirements for policies, procedures and quality assurance programs if such policies, procedures and programs exist for both hospital and nursing facility.

(2) Requirements for full-time staff positions, departments and committees if the hospital has similar positions/departments/committees that address needs in the nursing facility.

(3) Requirements for a drug room or pharmacy if the hospital has a pharmacy or drug room available to the nursing facility 24 hours per day.

(4) Rules requiring specific training for the DNS and the RN Care Manager until January 1, 1990.

(5) Requirements that the administrator be full-time in the nursing facility if the nursing facility has 40 or fewer licensed beds. The administrator, however, must work full-time, based on time spent on both the hospital and nursing facility responsibilities, and must be available to nursing facility staff on a full-time basis.

Stat. Auth.: ORS 410.070 & 441.055 tats. Implemented: ORS 441.055 & 441.615

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411-085-0060: Specialty Nursing Facilities

(1) APPLICATION. Facilities that have successfully obtained from the State Office of Health Policy a certificate of need for "specialty long-term care beds" pursuant to OAR 333-610 must make application to The Department for licensure as "Special Nursing Facility" in accordance with OAR 411-085-0010.

(2) ISSUANCE OF LICENSE. Licenses will only be issued to a Specialty Nursing Facility after written notification from the State Office of Health Policy that the facility is eligible for such licensure. The license issued will state "Specialty Nursing Facility" and will identify the type of residents and specialized services the facility is authorized to admit and retain.

(3) COMPLIANCE WITH RULES. Specialty Nursing Facilities will be required to meet all Oregon Administrative Rules that apply to Nursing Facilities.

(4) ADMISSIONS. Facilities and distinct parts of facilities licensed as Specialty Nursing Facilities must only admit and provide services for residents consistent with the Certificate of Need issued by the Office of Health Policy.

Stat. Auth.: ORS 410.070 & 441.055

Sats. Implemented: ORS 441.055 & 441.615

411-085-0200: Licensee, Employees, Consultants

(1) LICENSEE. The licensee will be responsible for the operation of the facility and the quality of care rendered in the facility.

(2) EMPLOYEES:

(a) Licensure, Registration, Certification Required. All health care personnel working in the facility must be licensed, registered, or certified as required. Documentation thereof is required for all such employees;

(b) Reference Check. The licensee must check and document references for all prospective employees prior to employment;

(c) Job Description. All employees' duties must be defined in writing and maintained in the facility. All employees must be instructed in and perform the duties assigned;

(d) Nursing Personnel. Before employing a registered nurse, licensed practical nurse or nursing assistant, the licensee must contact the Oregon State Board of Nursing and inquire whether the person is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the person or any substantiated abuse findings against a nursing assistant.

(3) PROHIBITION OF EMPLOYMENT. The facility must not employ or retain in employment any of the following:

(a) Any person found responsible for abusing, neglecting or mistreating a person receiving long-term care services in a final administrative action that is not under appeal or in a court of law;

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(b) Any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150; or

(c) Any person who is known or reasonably should be known to the facility to be abusive or to have been abusive.

(4) CONSULTANTS. When consultants are required, a facility will require consultants to file written reports at least quarterly. These reports must include date(s) of visit(s), length of time spent on premises, action taken on previous reports, problems identified, recommendations, staff members contacted, services performed, distribution of reports, and date mailed or delivered. The facility must maintain these quarterly reports in the facility.

Stat. Auth.: ORS 410.070 & 441.055

Sats. Implemented: ORS 441.055, 411.615,

441.679 & 441.637

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;

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- (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; and
- (u) Resident grievances.

(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

Stats. Implemented: ORS 441.055 & 441.615

411-085-0220: Quality Assurance

(1) QUALITY ASSESSMENT AND ASSURANCE COMMITTEE. Each facility must have a Quality Assessment and Assurance Committee. The committee must include the administrator, medical director, Director of Nursing Services (DNS), consulting pharmacist and at least one other facility staff person. The committee must:

- (a) Ensure a quality assurance program is conducted as required in this rule;
- (b) Adopt facility policies as identified in OAR 411-085-0210;
- (c) Ensure a pharmaceutical services review is completed as required by OAR 411-086-0260(2);
- (d) Ensure that an infection control program as identified in OAR 411-086-0330 is conducted; and
- (e) Meet no less often than quarterly.

(2) QUALITY ASSURANCE. The Quality Assessment and Assurance Committee must conduct an annual review of care practices to ensure quality. The review must include:

- (a) Evaluation of resident audits (biannual physical examination of a representative sample of facility residents). The sample must include a minimum of 20 percent of the residents or ten residents, whichever is greater;
- (b) Clinical records, including medication administration and treatments;
- (c) Resident nutritional status, including weights, intake, and output;

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- (d) Care plans to ensure that care needs have been identified and addressed;
- (e) The services and functions required by the policies listed in OAR 411-085-0210; and
- (f) Actions taken to resolve identified problems and to prevent their recurrence.

(3) DOCUMENTATION. All meetings of the Quality Assessment and Assurance Committee must be documented. Documentation must include a listing of those in attendance, length of the meeting, issues discussed, findings, actions, recommendations made and assessment of previous actions and recommendations.

Stat. Auth.: ORS 410.070 & 441.055

Stat. Implemented: ORS 441.055 & 441.615

411-085-0300: Civil Rights

- (1) The facility must not make any distinction, discrimination or restriction based on a resident's, potential resident's or visitor's sex, marital status, race, color, national origin or disability.
- (2) The facility must make reasonable accommodations in order to provide services needed by applicants who are disabled.

Stat. Auth.: ORS 410.070 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-085-0310: Residents' Rights: Generally

The facility must protect, encourage and assist the resident in exercising the rights identified in OAR 411-085-0300 - 411-085-0350. Each resident and his/her legal representative, as appropriate, has the right to:

- (1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.
- (2) Be fully informed, orally and in writing in a language the resident understands of these rights, and of all facility guidelines for resident conduct and responsibilities. This must be documented by the resident's written acknowledgment, prior to or at the time of admission.
- (3) Be fully informed, prior to or at the time of admission and during stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring that the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.
- (4) Be fully informed of his/her total health status, including but not limited to medical status. The resident must be informed of the right to choose his/her own physician and to be fully informed in advance of any changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his/her own decisions and fully participate in care and care planning unless the resident has been found legally incapable of doing so.

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- (5) Refuse any medication, treatment, care or any participation in experimental research unless the resident has been found legally incapable of doing so.
- (6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.
- (7) Be free from verbal, sexual, mental and physical abuse, corporal punishment and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.
- (8) Be transferred or discharged only in accordance with The Department's transfer/discharge rules.
- (9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects:
- (a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days;
 - (b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment would have a significant adverse impact on the resident's medical or psychological status;
 - (c) Moving residents on the basis of source of payment is not just cause for intrafacility transfers;
 - (d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.
- (10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act promptly upon grievances and recommendations received from residents and family groups.
- (11) Be treated with consideration, respect and dignity and assured complete privacy during treatment and when receiving personal care.
- (12) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened and to have regular access to the private use of a telephone.
- (13) Be provided privacy for visits when requested, including meetings with other residents and family groups.
- (14) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, Seniors and People with Disabilities, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this

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rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.

(15) Promptly inspect all records pertaining to the resident.

(16) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no case require more than two business days (days excluding Saturdays, Sundays and state holidays).

(17) Participate in social, religious, and community activities at the discretion of the resident.

(18) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.

(19) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, neither the facility nor any person subject to the supervision, direction, or control of the facility may retaliate by:

(a) Increasing charges or decreasing services, rights or privileges;

(b) Threatening to increase charges or decrease services, rights or privileges;

(c) Taking or threatening any action to coerce or compel the resident to leave the facility; or

(d) Abusing, harassing, or threatening to abuse or harass a resident.

(20) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.

(21) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.

Stat. Auth.: ORS 410.070 & 441.055
441.610, 441.615 & 441.700

Stats. Implemented: ORS 441.055, 441.600,

411-085-0320: Residents' Rights: Charges and Rates

(1) **ADMISSION.** The facility must provide written and oral notice before or at the time of admission to each resident specifying:

(a) The base daily rate, or Medicaid rate and, as soon as known, amount of resident liability, as applicable; services provided for that rate, and other charges that might reasonably be expected, including but not limited to medical supplies, pharmaceuticals, incontinence care, feeding, bedhold daily rate, and laundry;

(b) Whether the facility accepts Medicaid reimbursement:

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- (A) If the facility accepts Medicaid reimbursement, the notice must include a description of the Medicaid eligibility requirements and who to contact to apply for Medicaid assistance;
- (B) If the facility does not accept Medicaid, the notice must include the facility's policy regarding residents who exhaust their private resources and become eligible for Medicaid;
- (C) Nothing in this section will be construed to permit discrimination based on payment source; and
- (c) Alternative forms of transportation available to the resident for routine and emergency transportation, including information on possible cost and how to access such service(s).
- (2) RATE CHANGES. The facility must give 30 days' written notice to all residents of changes in base rates and any other charge.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.605 &

441.615

411-085-0330: Residents' Rights: Visitor Access

- (1) DEFINITION. As used in this rule, "full and free access" means access to the fullest extent possible without undue adverse interference on the operation of the facility.
- (2) FULL ACCESS. The facility must permit individuals and groups full and free access to:
- (a) Visit, talk with and make personal, social and legal services available to all residents;
- (b) Inform residents of their rights and entitlements, and their corresponding obligations, under federal and state laws by means of distribution of educational materials and discussion in groups and with individual residents;
- (c) Assist, advise and represent residents in obtaining public assistance, medical assistance, social security benefits and in asserting resident rights. Assistance may be provided to residents individually or in groups.
- (3) RIGHT TO REFUSE. The resident has the right to refuse contact with any individual or group who otherwise has access to the facility under this rule. The refusal to communicate with any individual or group must be made directly by the resident unless the resident's medical record clearly documents the reasons for not doing so.
- (4) SOLICITATION. This rule is not intended to allow access to persons or organizations whose primary purpose is to solicit purchase of services or products, or solicit contributions, from the residents or staff.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.605 &

441.615

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411-085-0340: Residents' Rights: Pharmaceutical Services, Charges for Drugs

(1) CHOICE OF SUPPLIERS:

(a) The resident must have a choice from among prescription/nonprescription drug delivery systems so long as the system selected:

(A) Provides for timely delivery of drugs;

(B) Provides adequate protection to prevent tampering with drugs;

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy.

(b) The resident must have a choice from among suppliers of nonprescription medication, but no facility is required to accept any opened container of such medication;

(c) If the established system of the facility, whether provided by facility pharmacy or a pharmacy under contract, provides resident profile information (diagnosis, medications and allergies), the pharmacy chosen by the resident under subsection (1)(a) of this rule must also provide that information for any resident it serves at the facility;

(d) The resident must have a choice from among suppliers of nonprescriptive sickroom supplies so long as any items supplied can be maintained in a clean manner with equipment available at the facility;

(e) For purposes of subsections (1)(b) and (c) of this rule, "supplier" includes an authorized representative of the resident who purchases nonprescriptive medication or nonprescriptive sickroom supplies at retail.

(2) CHARGES FOR DRUGS:

(a) If a facility charges residents for drugs, the following must be made available to the resident on request:

(A) Name of the drug;

(B) Amount paid by the facility for the drug;

(C) Amount charged by the facility for the drug; and

(D) Amount of repackaging costs, if any.

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(b) If a pharmacy charges any resident's insurance company or other party for a drug administered to a resident in a nursing facility, the pharmacy must provide on request a written bill listing the:

(A) Name of the drug; and

(B) Amount charged by the pharmacy for the drug.

Stat. Auth.: ORS 410.070 & 441.055
441.084 & 441.615

Stats. Implemented: ORS 441.055, 441.083,

411-085-0350: Residents' Rights: Personal Funds

(1) RESIDENT HELD FUNDS. The resident has the right to manage his/her financial affairs and the facility may not require residents to deposit personal funds with the facility.

(2) FACILITY HELD FUNDS.

(a) Resident Request. The facility must hold, safeguard, manage and account for the personal funds of the resident when requested in writing. The resident must be fully informed of the facility's system for protecting personal funds. When the resident requests that the facility hold such funds, the facility must ensure that such request is in writing;

(b) Accounting System. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility. The system may allow resident funds to be pooled together, however it must preclude any commingling of resident funds with facility funds;

(c) Report to Resident. The facility must provide a copy of the individual financial record to the resident no less often than quarterly and upon request of the resident. The statement must include the following information:

(A) Identification number and location of the account in which the resident's personal funds have been deposited.

(B) The resident's account balance at the beginning of the statement period.

(C) A listing of each deposit, and each withdrawal, to and from the resident's account. Each withdrawal must include an explanation of the reason for the withdrawal (Example: If money is requested by the resident, facility may document "resident request").

(D) The interest earned, if any, and the current interest rate.

(E) The ending balance.

(d) Resident Control of Funds. The facility must take all reasonable precautions to ensure the resident's funds are handled according to the resident's wishes. If resident's wishes cannot be determined, funds must be handled in accordance with the best interest of the resident;

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(e) Resident Access to Funds. The facility must allow residents access to funds on weekdays (Monday through Friday, excluding holidays) during business office hours (no less than six hours per day) and at least two hours per day on all other days;

(f) Funds Under \$50. The facility may hold up to \$50 for each resident in a non-interest-bearing, petty cash fund. All resident funds held by the facility that are not in the petty cash fund must be deposited in an interest-bearing account as described in subsection (g) of this rule,

(g) Funds \$50 and over.

(A) Whenever money held by the facility for a resident exceeds \$50, the excess above \$50 must, within 7 days of receipt, be deposited in the resident's interest-bearing account, unless the money is managed in a Trust and Agency Account held by The Department.

(B) If the interest-bearing account for residents is pooled, the facility must have a system that accurately and promptly allocates earned interest to the appropriate resident.

(h) SSI Resource Limit Exceeded. The facility must notify any resident receiving Medicaid benefits whenever his/her account reaches within \$200 of the SSI resource limit for one person; and that, if the amount in the account and the value of the resident's non-exempt resources reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI;

(i) Death of Resident. Upon the death of a Medicaid or General Assistance resident with no known surviving spouse, any personal incidental funds held by the facility for the resident must be forwarded to the Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem, OR 97309, within ten (10) business days of the death of the resident. The facility must maintain documentation of the action taken and the amount of funds conveyed;

(j) Surety Bond. The licensee must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility. The amount of the bond must be sufficient to cover the highest amount of the account with resident funds, plus the petty cash funds, during the previous 12 months.

(3) CHANGE OF OWNERSHIP OR LICENSEE. At the time of a change of ownership or licensee, the new owner or licensee must ensure:

(a) Written Accounting of Funds. Each resident or delegate receives a written accounting of his/her funds held by the facility at the time of the change. A copy of the written accounting for each resident must be provided to the local SPD or Type B AAA.

(b) Resident Wishes Respected. That the wishes of each resident regarding management of facility held funds is determined and documented (see OAR 411-070-0095 for Medicaid clients), and that funds held by the prior owner or licensee are transferred to the new owner or licensee or to another party, designated by the resident.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

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411-085-0360: Abuse

(1) ABUSE IS PROHIBITED. The facility employees, agents and licensee must not permit, aid, or engage in abuse of residents under their care.

(2) REPORTERS AND MANDATORY REPORTERS. All persons are encouraged to report abuse and suspected abuse. The following persons are required to immediately report abuse and suspected abuse to The Department or law enforcement agency;

(a) Physicians, including any resident physician or intern;

(b) Licensed practical nurse or registered nurse;

(c) Employee of the Oregon Department of Human Services, Area Agency on Aging, county health department or community mental health program;

(d) Nursing facility employee or any individual who contracts to provide services in a nursing facility;

(e) Peace officer;

(f) Clergy;

(g) Licensed social worker;

(h) Physical, speech or occupational therapist; and

(i) Family member of a resident or guardian or legal counsel for a resident.

(3) FACILITY REPORTING OF ABUSE OR SUSPECTED ABUSE.

(a) The nursing facility administration must immediately notify The Department, local designee of The Department, or local law enforcement agency of any incident of abuse or suspected abuse. Physical injury of an unknown cause must be reported to The Department as suspected abuse, unless an immediate facility investigation reasonably concludes the physical injury is not the result of abuse.

(b) The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (for example; rape; murder, assault, burglary, kidnapping, theft of controlled substances).

(c) The local law enforcement agency must be called if the offices of The Department or designee are closed and there are no arrangements for after hours investigation.

(4) ABUSE COMPLAINT. The oral or written abuse complaint must include the following information when available;

(a) Names, addresses and phone numbers of alleged perpetrator(s), resident(s) and witness(es);

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(b) The nature and extent of the abuse or suspected abuse (including any evidence of previous abuse);

(c) Any explanation given for the abuse or suspected abuse; and

(d) Any other information that the person making the report believes might be helpful in establishing the circumstances surrounding the abuse and the identity of the perpetrator.

(5) PRIVILEGE. In the case of abuse of a resident, the physician-patient privilege, the husband-wife privilege, and the privileges extended under ORS 40.225 to 40.295 will not be a ground for excluding evidence regarding the abuse, or the cause thereof, in any judicial proceeding resulting from an abuse complaint made pursuant to this section.

(6) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The facility licensee, employees and agents must not retaliate in any way against anyone who participates in the making of an abuse complaint, including but not limited to restricting otherwise lawful access to the facility or to any resident, or, if an employee, to dismissal or harassment;

(b) The facility licensee, employee and agents must not retaliate against any resident who is alleged to be a victim of abuse.

(c) Anyone who, in good faith, reports abuse or suspected abuse will have immunity from any liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint. Any such person will have the same immunity with respect to participating in judicial or administrative proceedings relating to the complaint.

(7) INVESTIGATION BY FACILITY. In addition to immediately reporting abuse or suspected abuse to The Department or law enforcement agency, the facility must promptly investigate all reports of abuse and suspected abuse and must take measures necessary to protect residents from abuse and prevent recurrence of abuse.

Stat. Auth.: ORS 410.070 & 441.055 Stats. Implemented: ORS 441.055, 441.615, 441.630, 441.637, 441.640, 441.645 & 441.655

411-085-0370: Confidentiality

This rule applies to facility licensees, employees and agents, to Division staff and the staff of all Area Agencies on Aging.

(1) RESIDENTS. The names of residents and all documentation that would allow the identification of a resident must be kept confidential and are not accessible for public inspection.

(2) COMPLAINANTS, WITNESSES. The names and identity of complainants and witnesses referred to in Division complaint investigations must be kept confidential and are not accessible for public inspection.

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DIVISION 86 – NF ADMINISTRATION AND SERVICES

411-086-0010: Administrator

(1) Full-Time. Each licensed nursing facility shall be under the supervision of a full-time Oregon licensed nursing home administrator:

(a) In facilities physically connected with an Oregon licensed general hospital, the nursing home administrator shall be considered "full-time" if the administrator works full-time based on time worked in both nursing facility and hospital, and if the administrator is available to the nursing facility staff on a full-time basis;

(b) In facilities with 40 or fewer beds and which admit only residents requiring intermediate care, a person who meets the requirements for both administrator and director of nursing services (DNS) may function simultaneously in both capacities.

(2) Responsibility:

(a) The administrator shall ensure that the facility uses its resources effectively and efficiently to attain and maintain the highest practicable physical, mental and psychosocial well-being of each resident;

(b) The administrator shall comply with the rules of the Board of Examiners of Nursing Home Administrators;

(c) The administrator shall provide a comprehensive review of Division survey reports and inspections to the licensee.

(3) Temporary Absence of Administrator:

(a) The licensee shall designate, by written policy, an individual who is familiar with the operation of the facility to assume administration in the temporary absence of the administrator. If the designee is the DNS, another RN shall assume the DNS' responsibilities for this period;

(b) If the absence of the administrator is to exceed 30 days, the facility must notify the Division and obtain approval for the arrangements prior to the absence. The Division shall determine whether a licensed administrator shall serve in the administrator's absence.

(4) Change of Administrator:

(a) Upon termination of the administrator, the licensee shall immediately replace the administrator with a full-time administrator;

(b) The licensee shall notify the Division and the Board of Examiners of Nursing Home Administrators within seven days from the date the administrator leaves employment of the facility.

Stat. Auth.: ORS 410.070, 410.090 & 441.055

Stats. Implemented: ORS 678.720

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411-086-0020: Director of Nursing Services (DNS)

(1) Full-Time. Each facility shall have a director of nursing services who shall be full-time (40-hours per week) in a single nursing facility. Time spent in professional association workshops, seminars and continuing education may be counted in considering whether or not the DNS is full-time.

(2) Qualifications. The DNS shall be a registered nurse who has specific knowledge about nursing administration in a nursing facility:

(a) The DNS shall have at least six months experience in a nursing facility, hospital, or inpatient rehabilitation facility;

(b) Within nine months of employment the DNS shall have:

(A) Successfully completed six credit hours in management or supervision, pertinent to long-term care, from an accredited college or university; or

(B) A baccalaureate or master's degree in nursing and documentation of course work which includes management or supervision.

(c) The DNS shall successfully complete every two years at least 30 continuing education hours pertinent to nursing administration in a nursing facility.

(3) Responsibility:

(a) The DNS shall have written administrative authority, responsibility, and accountability for assuring functions and activities of the nursing services department. The DNS shall participate in the development of any facility policies that affect the nursing services department (OAR 411-085-0210). The DNS shall organize and direct the nursing service department to include as a minimum:

(A) Develop and maintain a nursing service philosophy, objectives, standards of practice, policy and procedure manuals, and job descriptions for each level of nursing service personnel;

(B) Develop and maintain personnel policies of recruitment, orientation, in-service education, supervision, evaluation and termination of nursing service staff;

(C) Develop and maintain policies and procedure for determination of nursing staff's capacity for providing nursing care for any person seeking admission to the facility;

(D) Develop and maintain a quality assurance program for nursing services;

(E) Coordinate nursing service departmental functions and activities with the functions and activities of other departments;

(F) Develop nursing service department budget recommendations and participate with the facility administrator and other department directors in the allocation of funds for the facility;

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(G) Participate with the facility administrator and other department directors in development and maintenance of practices and procedures that promote infection control, fire safety, and hazard reduction;

(H) Ensure that all medications and treatments are given promptly as ordered;

(I) Ensure that only licensed nurses or physicians administer injectable medications;

(J) Ensure adequate nursing services staffing (see OAR 411-086-0100), including development of a written staffing plan; and

(K) Ensure that all nursing staff perform their respective duties in a timely, efficient and professional manner.

(b) The DNS shall designate, in writing, a specific registered nurse, licensed to practice in Oregon, to be available immediately in person or by telephone to direct the functions and activities of the nursing services department when the DNS is not available in person or by telephone. This information shall be posted at each nursing station;

(c) The DNS shall be informed regarding residents' conditions, including when a significant change in a resident's condition warrants nursing or medical intervention;

(d) Effective October 1, 1990, or in the event of delay of the actual federal requirement, effective the actual implementation date, the DNS may serve as the charge nurse only if the facility has a licensed bed capacity of 60 or less and does not provide care for residents requiring skilled nursing care.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-086-0030: RN Care Manager

The RN care manager is a registered nurse who is responsible and accountable for managing the nursing care of his/her assigned residents. Each resident shall have an RN care manager responsible for his/her care:

(1) Training:

(a) Within nine months of hire each RN care manager shall have successfully completed three credit hours from an accredited school, or 30 continuing education hours, pertinent to gerontology, rehabilitation, or long-term care;

(b) Within nine months of hire each RN care manager shall have successfully completed three credit hours from an accredited college or university, or 15 continuing education hours, pertinent to management or supervision.

(2) Responsibility:

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(a) The RN care manager shall be responsible and accountable for managing the nursing care of his/her assigned residents. The RN care manager shall ensure maximum independence and self-direction for residents;

(b) The RN care manager shall coordinate the nursing functions and tasks for those residents with physicians and other health care providers. The responsible RN care manager shall ensure the nursing plan and resident care plan are developed and documented, and that residents' care needs are met;

(c) Delegated authority:

(A) The RN care manager shall delegate to other licensed personnel only those nursing functions and tasks that the licensee is competent and qualified to perform and that are permitted by ORS Chapter 678;

(B) The RN care manager, or an RN or LPN with delegated authority from the RN care manager, shall ensure that the nursing assistant is assigned and performs only those tasks for which he/she is competent and qualified to perform and that are permitted by ORS Chapter 678.

(3) Documentation. The name of the responsible RN care manager shall be documented in each resident's clinical record.

Stat. Auth.: ORS 410.070, 410.090 & 441.055
441.615

Stats. Implemented: ORS 441.055 &

411-086-0040: Admission of Residents

(1) Admission Conditions:

(a) The facility shall not accept or retain residents whose care needs cannot be met by the facility;

(b) No person shall be admitted to the facility except on the order of a physician;

(c) Admission medical information shall include a statement concerning the diagnosis and general condition of the resident, a medical history and physical, or a medical summary. Other pertinent medical information, orders for medication, diet, and treatments shall also be provided;

(d) No resident shall be admitted to a bed in any location other than those locations shown in the most recent floor plan filed with the Division and under which the license was issued;

(e) No facility shall admit an individual who is mentally ill or mentally retarded unless the Division or local representative thereof has determined that such placement is appropriate.

(2) Admission Status, Preliminary Care Plan, Preliminary Nursing Assessment:

(a) A licensed nurse shall document the admission status of the resident within eight hours, including but not limited to skin condition, nutritional status, hydration status, mental status, vital

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signs, mobility, and ability to perform ADLs. This review of resident status shall be sufficient to ensure that the immediate needs of the resident are met;

(b) A licensed nurse shall develop a preliminary resident care plan within 24 hours of admission. Staff providing care for the resident shall have access to, be familiar with, and follow this plan;

(c) Social services shall be provided to the resident in accordance with the preliminary resident care plan not later than three days after admission;

(d) A registered nurse shall complete and document a comprehensive nursing assessment within 14 days of admission;

(e) A resident care plan shall be completed pursuant to OAR 411-086-0060.

(3) Directives for Medical Treatment. Each resident shall be provided the following information and materials in written form within five days of admission, but in any event before discharge:

(a) A copy of "**Your Right to Make Health Care Decisions in Oregon**," copyright **1991**, by the **Oregon State Bar Health Law Section**, which summarizes the rights of individuals to make health care decisions, including the right to accept or refuse any treatment or medication and the right to execute directives and powers of attorney for health care;

(b) Information on the facility's policies with respect to implementation of those rights;

(c) A copy of the Advance Directive form set forth in ORS 127.531 and a copy of the Power of Attorney for Health Care form set forth in ORS 127.610, along with a disclaimer attached to each form in at least 16-point bold type stating "**You do not have to fill out and sign this form**"; and

(d) The name and location of a person who can provide additional information concerning the forms for directives and powers of attorney for health care.

(4) Contracts, Agreements. Contracts, agreements and all other documents provided to, or required to be signed by, the resident shall not misrepresent or be inconsistent with the requirements of Oregon law. See OAR 411-085-0300 - 411-085-0350.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0050: Admission of Day Care Residents

Day care residents may be admitted to the facility only if the facility has written approval from the Division to admit day care residents, the facility is in compliance with OAR 411, divisions 85-89, and provided admittance does not interfere with care needs of other residents. Day care residents are considered "residents" for the purpose of OAR 411, divisions 85-89, unless specifically stated otherwise:

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(1) Application. Application for permission to accept day care residents shall be made to the Division on a form provided by the Division.

(2) Physical Environment:

(a) The number of day care residents shall not exceed one for every 40 square feet of floor space available for use by day care residents;

(b) Provision shall be made for dining, such as tray service or dining area. Day care residents shall be served meals at the same times as other residents;

(c) Each day care resident shall have either an unassigned bed or a folding cot in an area where rest and privacy can be provided;

(d) There shall be one toilet and one lavatory available to every 15 day care residents. Such facilities shall be in close proximity to the area used by day care residents;

(e) All space required for day care residents shall be in addition to space required for other residents.

(3) Physician. Day care residents shall be under the care of a licensed physician. The physician shall provide the facility with a statement on admission concerning the diagnosis and general condition of the resident and with orders for prescribed care.

(4) Medications. Day care residents taking medication prescribed by their physicians may bring such medication in the original containers to the facility.

(5) Activities. The day care resident shall be encouraged to participate in a program of activities which are suitable to the needs and interests of the day care resident, and which promote learning by and independence of the resident.

(6) Care Plan. Each day care resident shall have a preliminary care plan which includes a nursing assessment and addresses dietary needs/restrictions and activities.

(7) Documentation:

(a) There shall be available for each day care resident an admission summary sheet including resident's name, address, telephone number, sex, social security number; name, address, and telephone number of nearest relative or personal representative and attending physician;

(b) There shall be available for each day resident a medication sheet including date, time, dosage, method of administration, and any reaction to a medication. Such medication sheet shall be signed by the nursing personnel administering the medication.

*Stat. Auth.: ORS 410.070, 410.090 & 441.055
441.615*

Stats. Implemented: ORS 441.055 &

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411-086-0060: Comprehensive Assessment and Care Plan

(1) Comprehensive Assessment:

(a) An RN shall ensure completion and documentation of a comprehensive assessment of the resident's capabilities and needs for nursing services within 14 days of admission. Comprehensive assessments shall be updated promptly after any significant change of condition and reviewed no less often than quarterly. This assessment shall be on a form specified by the Division. The assessment shall include the following:

- (A) Medically defined conditions and medical history;
- (B) Medical status measurement;
- (C) Functional status;
- (D) Sensory and physical impairments;
- (E) Nutritional status and requirements;
- (F) Treatments and procedures;
- (G) Psychosocial status (see OAR 411-086-0240);
- (H) Discharge potential (see OAR 411-086-0160);
- (I) Dental condition;
- (J) Activities potential (see OAR 411-086-0230);
- (K) Rehabilitation and restorative potential (see OAR 411-086-0150 and 411-086-0220);
- (L) Cognitive status; and
- (M) Drug therapy.

(b) Social services, activities and dietary personnel shall complete an assessment within 14 days of admission.

(2) Care Plan Preparation and Implementation. The facility, through the nursing services department and the interdisciplinary staff, shall provide services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a written, dated, care plan:

(a) The plan shall be completed within seven days after completion of the comprehensive assessment. The care plan shall be reviewed and updated whenever the resident's needs change, but no less often than quarterly;

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- (b) The care plan shall describe the medical, nursing, and psychosocial needs of the resident and how the facility will actively meet those needs. This description of needs shall include measurable objectives and time frames in which the objectives will be met;
- (c) The plan shall provide for and promote personal choice and independence of the resident;
- (d) The plan shall be reviewed and completed at an interdisciplinary care planning conference with participation from the resident's RN care manager and personnel from dietary, activities and social services. The resident's attending physician will participate in the development and any revision of the care plan. Physician participation may be in person, through communication with the DNS or RN Care Manager, or via telephone conference;
- (e) The resident, the resident's legal representative, and anyone designated by the resident shall be requested to participate. The request shall be documented in the resident's clinical record;
- (f) The plan shall be prepared and implemented with participation of the resident and in accordance with the resident's wishes;
- (g) The plan shall include an assessment of the resident's potential for discharge and the facility's efforts to work toward discharge;
- (h) The plan shall be available to and followed by all staff involved with care of the resident.

(3) Documentation:

- (a) The care plan shall be written in ink and made a part of the resident's clinical record;
- (b) Participation in development of the care plan by interdisciplinary staff will be clearly documented.

Stat. Auth.: ORS 410.070, 410.090 & 441.055
441.615

Stats. Implemented: ORS 441.055 &

411-086-0100: Nursing Services: Staffing

(1) STAFFING PLAN.

- (a) The facility shall have a written plan which ensures staffing sufficient to meet the needs of each resident and identifies procedures to obtain required staff when absences occur.
- (b) The facility shall maintain a written, weekly staffing schedule showing the number and category of staff assigned to each shift and the person(s) to be called in the event of any absence.
- (c) Both planned and actual staffing, including number and category of personnel, shall be clearly documented.

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(2) MINIMUM STAFFING, GENERALLY. Resident care needs shall be the primary consideration in determining the number and categories of nursing personnel needed. Staffing shall be sufficient in quantity and quality to provide nursing care for each resident as needed, including restorative care that enables each resident to achieve and maintain the highest possible degree of function, self-care and independence, as determined by the resident's care plan. Such staffing shall be provided even though it exceeds other requirements specified by this rule or specified in any waiver.

(3) MINIMUM LICENSED NURSE STAFFING.

(a) Licensed nurse hours shall include no less than one RN hour per resident per week;

(b) When an RN serves in the temporary absence of the administrator, his/her hours shall not be used to meet minimum nursing hours.

(c) In facilities with 41 or more beds the hours of a licensed nurse who serves as facility administrator shall not be included in any licensed nurse coverage required by OAR 411-086-0100.

(d) The facility shall have a licensed charge nurse on each shift, 24-hours per day. The charge nurse must be an RN for no less than eight consecutive hours, between 7 am and 11 pm, seven days a week.

(A) The DNS may serve as charge nurse only when the facility has 60 or fewer residents.

(B) Subsection (3)(d) of this rule may be waived by the Division if the licensee demonstrates that:

(i) It has been unable to recruit appropriate personnel despite diligent effort (including offering wages at the community prevailing rate for nursing facilities);

(ii) The waiver will not endanger the health or safety of residents;

(iii) The request for waiver shall comply with OAR 411-085-0040 and shall be reviewed annually; and

(iv) The request for waiver shall certify that an RN or physician is obligated to immediately respond to telephone calls from the facility.

(4) MINIMUM CERTIFIED NURSING ASSISTANT STAFFING.

(a) Each resident shall have a nursing assistant assigned to his/her care on each shift (nursing assistants may be assigned by room number). The numbers listed in this rule are not intended to indicate sufficient nursing staff; the minimum staff required are the numbers sufficient to meet resident care needs. The number of residents assigned to the nursing assistant shall not exceed the following numbers:

(A) DAY SHIFT (7 am until 3 pm): 10 residents.

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(B) SWING SHIFT (3 pm until 11 pm): 15 residents.

(C) NIGHT SHIFT (11 pm until 7 am): 25 residents.

(b) A facility providing an alternate schedule to the Division specifying the maximum numbers of residents assigned to any nursing assistant on each shift may be granted a variance to paragraphs (4)(a)(A), (B) and (C) of this rule. Such requests must comply with OAR 411-085-0040.

(c) This rule does not prohibit nursing assistants from providing care to a resident to whom they are not assigned.

(d) The licensee shall ensure that nursing assistants shall only perform those tasks for which they are competent and qualified to perform and that are permitted by ORS Chapter 678.

(e) Notwithstanding subsection (4)(a) of this rule, the licensee shall ensure that nursing assistants shall not be assigned more residents than the number for which they can meet the individual care needs.

(f) Notwithstanding subsection (4)(a) of this rule, the licensee is required to have a minimum of two nursing care staff on duty at all times.

(g) Notwithstanding subsection (4)(a) of this rule, nursing assistants do not include dining assistants.

(h) A licensee shall not use any individual working in the facility as a nursing assistant for more than four months unless that individual has completed a training and competency evaluation program approved by the Oregon State Board of Nursing (OSBN) or has been deemed competent as a CNA by the OSBN.

(i) No more than 25% of the nursing assistants assigned to residents pursuant to subsection (4)(a) of this rule may be nursing assistants who are not yet certified.

(5) CERTIFIED MEDICATION AIDES. The licensee shall ensure that all nursing assistants administering non-injectable medications are certified as nursing assistants and as medication aides. Documentation of certification shall be maintained in the facility.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055, 441.073 & 441.615

411-086-0110: Nursing Services: Resident Care

(1) Nursing Services Generally. Nursing services staff shall provide and document nursing services for each resident. Nursing staff shall provide services to attain and maintain the highest practicable physical, mental and psychosocial well-being, independence, self-direction, and self-care of each resident, including:

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(a) Good grooming and cleanliness of body, skin, nails, hair, eyes, ears, and face, including removal or shaving of hair in accordance with resident wishes, and prompt assistance with toileting needs and care for incontinence;

(b) Good body alignment and adequate exercise or range-of-motion, including, when practicable, ambulation;

(c) Adequate fluid and nutritional intake:

(A) Assistance or supervision with eating and drinking shall be provided as required;

(B) Fluids shall be offered at least three times a day (in addition to meal times) to residents who are unable to help themselves; and

(C) Weigh each resident on admission and quarterly thereafter or more often if resident's condition warrants it.

(d) Adequate sleep and rest;

(e) Oral hygiene;

(f) Bowel and bladder evacuation and continence;

(g) Optimal freedom from pain; and

(h) Resident ability to:

(A) Dress, bathe and groom;

(B) Transfer and ambulate;

(C) Appropriately interact with others; and

(D) Effective October 1, 1990, or in the event of delay of the federal requirement, effective the actual federal implementation date, self-medicate based on nursing and physician assessment and provision of instruction to the resident if necessary.

(2) Coordination of Services. The DNS and RN care manager shall coordinate the provision of nursing services for the resident with other disciplines and providers. The DNS and RN care manager shall ensure provision and documentation of resident care interventions prescribed by other health care professionals, including timely medications and treatments ordered by the resident's physician.

(3) Questionable Care. When any RN questions the efficacy, need or safety of medications or treatments, the RN shall report that question to the attending physician or nurse practitioner. The RN shall seek and document instructions received and all actions taken to ensure problem resolution.

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(4) Standards of Practice. Nursing care staff shall provide nursing services in accordance with the Oregon Nurse Practice Act (ORS Chapter 678).

(5) Documentation. Licensed nursing staff shall evaluate and accurately document in the clinical record the effectiveness of services provided to the resident, including required preventive care, at least quarterly.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0120: Nursing Services: Changes of Condition

(1) Change of Condition (Generally). Nursing staff shall observe, assess, document, and report to the DNS and the resident's physician any significant change in resident condition that warrants medical or nursing intervention, including any significant change in:

- (a) Vital signs;
- (b) Skin integrity (i.e., decubitus ulcer);
- (c) Hydration;
- (d) Ability to take or retain food or fluids;
- (e) Weight gain/loss;
- (f) Bowel or bladder function;
- (g) Behavior;
- (h) Level of comfort (i.e., pain, injury); or
- (i) Level of consciousness.

(2) Acute Condition Change. The nursing staff shall ensure that any significant and acute condition change is promptly assessed and documented by a registered nurse and that appropriate measures are immediately instituted.

(3) Documentation. Documentation shall include assessment, appropriate interventions, monitoring and outcome until point of resolution.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0130: Nursing Services: Notification

(1) Notification of Significant Other(s). The nursing care staff or other designated staff shall notify the resident's significant others as soon as possible whenever:

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(a) The resident has had a change of physical, mental or psychosocial status, including death or accident resulting in injury, or change in type of care needed;

(b) The resident has wandered from the facility.

(2) Notification of Division. The nursing care staff shall notify the Division of any situation in which the health or safety of the resident(s) was/is endangered such as:

(a) Suspected abuse;

(b) Fire;

(c) Lost resident;

(d) Accidental or unusual death.

(3) Notification of Physician. The nursing care staff shall notify the resident's physician of possible changes in the type of care the resident needs and document such notification in the resident's clinical record. Such notification shall be timely. The physician's determination shall be documented in the resident's clinical record.

NOTE: See requirements for physician visits under OAR 411-086-0200.

(4) Documentation. The nursing care staff, except as provided by section (3) of this rule, shall document all notification/con-sultation required by this rule in the resident's clinical record.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0140: Nursing Services: Problem Resolution and Preventive Care

(1) Problem Resolution and Prevention:

(a) Conditions to be Prevented. The licensee shall take all reasonable measures consistent with resident choice to resolve and to prevent undesirable conditions such as:

(A) Decubitus ulcers and other skin breakdowns;

(B) Loss of mobility, or development of contractures or foot drop;

(C) Dehydration;

(D) Impaction;

(E) Infections;

(F) Weight loss/gain;

(G) Loss of range of motion;

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(H) Loss of bowel and bladder control; and

(I) Loss of self-esteem or dignity.

(b) Reasonable Measures. Reasonable measures which are required to be taken include, but are not limited to:

(A) Assessment of residents who are at risk;

(B) Implementation of preventive measures; and

(C) Reassessment and modification of treatment program when the program implemented is not effective.

(2) Safe Environment. The licensee shall ensure the provision of a safe environment to protect residents from injury. Actions taken by the facility staff shall be consistent with each resident's right to fully participate in his or her own care planning and shall not limit any resident's ability to care for herself/himself:

(a) Dangerous Conditions. The licensee shall take all reasonable precautions to protect a resident from possible injury from dangerous conditions;

(b) Falling, Wandering, Negligence. The licensee shall take all reasonable precautions to protect a resident from possible injury from falling, wandering, other resident(s), staff and staff negligence;

(c) Reasonable Precautions. Reasonable precautions include, but are not limited to, provision and documentation of an assessment and evaluation of resident's condition, medications, and treatments, and completion of a care plan, consistent with OAR 411-086-0060; and, when appropriate:

(A) Physician notification;

(B) Provision of additional inservice training; and/or

(C) Evaluation/adjustment of staffing patterns and supervision.

(d) The licensee shall take all reasonable precautions to protect a resident from dangerous conditions relating to remodeling or construction.

(3) Restraints. The licensee shall ensure that, except when required in an emergency, physical and chemical restraints are only applied in accordance with the resident's care plan. Restraints may be used only to ensure the physical safety of the resident or other residents:

(a) Freedom of Choice. When restraints are considered in the interdisciplinary care planning conference to reduce the risk of injury related to falls, the resident or his/her legal guardian or person acting under the resident's power of attorney for health care must be informed of the potential risks of falling and the risks associated with restraints;

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(b) Physician Orders Required. Except as provided in subsection (3)(c) of this rule, physical and chemical restraints may be applied only when a physician orders restraints. An order for restraints must clearly identify the reason for the restraints and the duration and circumstances under which they are to be applied;

(c) Emergencies. In an emergency situation, a registered nurse may use physical restraints without physician orders if necessary to prevent injury to the resident or to other residents and when alternative measures do not work. If restraints are used in an emergency situation, the registered nurse shall document in the resident's clinical record the use of restraints and what alternative measures did not work. A licensed nurse shall contact the physician for restraint orders within 12 hours of application;

(d) Re-evaluation. Whenever restraints are used, circumstances requiring the restraints and the need must be continually re-evaluated and documented in the clinical record;

(e) Staff Convenience/Discipline. Restraints shall not be used for discipline or staff convenience;

(f) Periodic Release. Residents who are physically restrained must have the restraints released at least every two hours for a minimum of ten minutes and be repositioned, exercised or provided range of motion during this period;

(g) Toileting. Toileting and incontinence care shall be provided when necessary;

(h) Quick Release. All physical restraints must allow for quick release. Locked restraints may not be used;

(i) Fixed Objects. Residents shall not be physically restrained to a fixed object.

(4) Documentation. All preventive measures taken by the facility staff shall be clearly documented. Such documentation shall include assessment of resident(s) at risk, preventive measures taken, results and evaluation of measures taken, and revision of measures as appropriate.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-086-0150: Nursing Services: Restorative Care

(1) Restorative Program. Nursing services staff shall provide a restorative program which re-establishes and maintains to the greatest extent practical the functional abilities of residents. Such functional abilities shall include but not be limited by the abilities identified in OAR 411-086-0110(1). The facility shall have written policies governing the provision and documentation of restorative services pursuant to OAR 411-085-0210.

(2) Director. The Director of Nursing Services or his/her designee shall ensure the development and implementation of an effective restorative services program.

(3) Staffing. Restorative services shall be provided by facility nursing staff in accordance with the resident's care plan.

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(4) Restorative Plan. Each resident shall have a restorative plan based on an assessment of resident's needs and delivered in accordance with the resident care plan:

(a) Restorative services shall be provided to the resident in accordance with the preliminary resident care plan not later than 24 hours after admission;

(b) The restorative services plan shall be reviewed and updated as frequently as the resident's condition changes, but no less often than quarterly.

(5) Documentation. All restorative services provided and results of those services shall be clearly documented in the resident's clinical record. Progress notes relevant to the plan shall be documented in the resident's clinical record as frequently as the resident's condition or ability changes, but no less often than quarterly.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-086-0160: Nursing Services: Discharge Summary

(1) Discharge Summary Required. A discharge summary shall be completed for each resident before discharge.

(2) Contents. The discharge summary shall include:

(a) A recapitulation of the resident's stay;

(b) A final summary of the resident's status, including the most recent nursing assessment as defined in OAR 411-086-0060; and

(c) A post-discharge plan of care developed in accordance with OAR 411-086-0060 which will assist the resident to adjust to his/her new living environment. A post-discharge plan is not required when the resident is discharged to acute care or to the morgue.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-086-0200: Physician Services

(1) Medical Director. Each nursing facility shall have a physician medical director designated in writing. The medical director shall:

(a) Serve on the Quality Assessment and Assurance Committee; and

(b) Assist the facility to assure that adequate medical care is provided on a timely basis in accordance with facility policy (OAR 411-085-0210);

(c) Serve as attending physician for those residents who are not able to obtain services of another physician or ensure another physician is available to serve as attending physician.

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(2) Attending Physician. Each resident shall be under the care of a physician who is responsible for the resident's medical care:

(a) Physician Assistant. The physician may delegate tasks to a physician assistant pursuant to ORS Chapter 677 and rules adopted by the Board of Medical Examiners. The physician assistant must be under the direction and supervision of the resident's physician;

(b) Nurse Practitioner. The physician may delegate tasks to a nurse practitioner pursuant to ORS Chapter 678 and the rules adopted by the Oregon State Board of Nursing;

(c) Clinical Nurse Specialist in Gerontological Nursing. The physician may delegate responsibilities identified in subsection (4)(a) of this rule to a registered nurse who is certified by the American Nurses Association's Credentialing Center as a "Clinical Specialist in Gerontological Nursing." The specific tasks which may be delegated to the clinical nurse specialist are governed by the scope of practice as specified by the Oregon State Board of Nursing;

(d) Delegation:

(A) Except as provided in section (4) of this rule, a physician may delegate tasks to a physician assistant, nurse practitioner or clinical nurse specialist who is acting within the scope of practice as defined by Oregon law and who is under the supervision of a physician.

EXCEPTION: A physician may not delegate a task in a Medicare-certified facility when federal regulations specify the physician must perform it personally.

(B) The physician assistant, nurse practitioner or clinical nurse specialist substituting for physician visits as described in subsection (4)(a) of this rule may not be an employee of the nursing facility.

(3) Medications and Treatments:

(a) Authorization. Physician's orders shall either be initially written and signed by the physician, nurse practitioner (NP) or physician assistant (PA), or given verbally or by telephone. If given verbally or by telephone, the orders shall be accepted only by a licensed nurse and must be written and mailed to the physician, NP or PA within 72 hours to be signed and returned to the facility for filing in the resident's chart;

(b) Promptly Carried Out. All physician orders shall be promptly carried out unless inconsistent with the resident's expressed wishes;

(c) Orders Required. Medications and treatments shall be administered only on the order of a physician or a designee pursuant to ORS Chapters 677, 678, and 679;

(d) Standing Orders. Therapies and drugs not requiring prescription under ORS Chapter 689 may be ordered from standing orders of the attending physician, NP or PA. Therapies and drugs so ordered shall be reviewed and signed at least annually by the attending physician. Use of standing orders shall be authorized by licensed personnel and transcribed to the physician order form.

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(4) Physician Visits:

(a) Frequency. Physician visits shall be according to resident's needs. The physician shall comply with Medicare/Medicaid requirements when applicable. Physician visits shall conform to the following schedule:

(A) Medicare Facilities. For residents in Medicare certified facilities, each resident must be seen by the physician at least every 30 days for the first 90 days after admission, then every 60 days thereafter. If authorized by the physician, every other visit after the first visit may be conducted by a physician's assistant, a clinical nurse specialist as specified in section (2) of this rule, or nurse practitioner;

(B) Medicaid Only Facilities. For residents in Medicaid certified facilities which are not certified for Medicare, each resident must be seen by the physician at least every 30 days for the first 90 days after admission, then every 60 days thereafter. If authorized by the physician, visits after the first visit may be conducted by a physician's assistant, a clinical nurse specialist as specified in section (2) of this rule, or nurse practitioner; however, the physician must visit the resident at least annually;

(C) Licensed Only Facilities. For residents in all facilities which are not certified for either Medicaid or Medicare, each resident shall be visited by the physician every 30 days for the first 90 days, then every 180 days thereafter. If authorized by the physician, visits after the first visit may be conducted by a physician's assistant, a clinical nurse specialist as specified in section (2) of this rule, or nurse practitioner; however, the physician must visit the resident at least annually;

(D) Timely Visit. A visit required pursuant to paragraph (4)(a)(A), (B), or (C) of this rule will be considered "timely" if it occurs not later than ten days after the date the visit was required.

(b) Assessments, Observation. The facility shall ensure a physician's assessment and determination of type of care needed is performed for each resident. The results and observations shall be recorded in the physician's progress notes at time of admission and at least annually thereafter;

(c) Policies. The facility shall establish policies to assure physician services are provided in all cases when the attending physician or his/her alternate physician cannot or does not respond to the resident's needs;

(d) Failure to Visit. If the physician or physician designee fails to visit the resident according to resident's need, fails to respond to requests for assistance in resident's care, or fails to return verbal or telephone orders reduced to writing and forwarded to the physician by the facility, then the facility administrator shall ensure:

(A) Reasonable and repeated attempts are made and documented in the clinical record to get the physician or physician designee to visit resident or return signed orders;

(B) The medical director is notified and the Quality Assessment and Assurance Committee reviews the situation;

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(C) The County Medical Society, State Medical Society, and the Board of Medical Examiners are notified in writing of the problem;

(D) The Division is notified in writing of the physician's failure to visit resident(s) or complete his/her progress notes or signed orders; and

(E) The resident and the resident's significant other(s) are notified.

(e) Emergency Backup. Each facility shall provide for one or more physicians to be called in the event of a medical emergency. The names and telephone numbers of such physicians shall be posted at each nurses' station.

(5) Documentation. All physician orders, physician visits, and responses thereto shall be promptly documented in the resident's clinical record.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0210: Dental Services

(1) Consulting Dentist. The facility shall have an consulting dentist who shall:

(a) Participate in the development of written policies and procedures for routine dental care, dental emergencies, and oral hygiene (OAR 411-085-0210);

(b) Be available in case of a dental emergency or arrange for another dentist to be available;

(c) Recommend procedures for oral health inservice training. This training shall be provided to appropriate staff at least annually; and

(d) Instruct or arrange for a dental hygienist to instruct registered nurses on the facility staff in how to perform oral screenings.

(2) Physician Participation. The dentist's written treatment orders shall be followed upon documented verbal approval of the attending physician.

(3) Dentures Marked. The facility shall cause the resident's dentures to be marked for identification.

(4) Documentation. Oral and dental care services shall be documented in the resident's clinical record.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0220: Rehabilitative Services

(1) Rehabilitation Program. The facility shall provide rehabilitative services, when applicable, which re-establishes and maintains to the greatest extent practical the functional abilities of

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residents. The facility shall have written policies governing the provision and documentation of rehabilitative services pursuant to OAR 411-085-0210.

(2) Director. The Director of Nursing Services or his/her designee shall ensure the development and implementation of an effective rehabilitation services program when applicable.

(3) Staffing. When a resident requires rehabilitative services, the services shall be ordered by the attending physician and provided or supervised by personnel qualified under state law to provide that service.

(4) Rehabilitation Plan. Each resident shall have a rehabilitation plan based on an assessment of resident's needs and delivered in accordance with the resident care plan:

(a) The rehabilitation plan shall be implemented within seven days of admission;

(b) The rehabilitation plan shall be reviewed and updated as frequently as the resident's condition changes, but no less often than quarterly.

(5) Documentation. All rehabilitative services provided and results of those services shall be clearly documented in the resident's clinical record. Progress notes relevant to the plan shall be documented in the resident's clinical record as frequently as the resident's condition or ability changes, but no less often than quarterly.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-086-0230: Activity Services

(1) Activity Program. The facility shall have an activity program available to all residents which encourages each resident to maintain normal activity and to return to self-care. The program shall address the intellectual, social, spiritual, creative, and physical need(s), capabilities, and interests of each resident, and shall encourage resident self-direction:

(a) The program shall encourage involvement and allow each resident to attain and maintain function at his/her highest practical level, and shall include both group and individual activities;

(b) Residents and staff will be informed of scheduled activities;

(c) The program shall include activities meaningful to the residents at least six days per week including:

(A) Gross motor activities (e.g., exercise, dancing, gardening, crafts);

(B) Individual self-care activities designed to enhance personal responsibility and choice (e.g., dressing, personal hygiene);

(C) Social activities (e.g., games, outside activities, field trips); and

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(D) Sensory enhancement activities (e.g., pictures, music, olfactory and tactile stimulation, reminiscing, pet therapy).

(d) The facility shall provide equipment, supplies and space to meet individual and group activity needs.

(2) Activity Director. The facility shall employ an Activity Director. He/she shall have a written job description which identifies the duties and responsibilities of the position, including the requirements set forth by this rule:

(a) Qualifications. The Director shall meet one of the following:

(A) Have two years experience in a social or recreational program within the past five years, one of which was full-time in a patient activities program in a health care setting; or

(B) Be eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or

(C) Be a qualified occupational therapist or occupational therapy assistant; or

(D) Have completed a 36-hour activities workshop. The workshop must be conducted by an individual with a master's or bachelor's degree in recreation therapy or a closely related field, or by a registered occupational therapist. Such individual must have at least one year of experience in long-term care services. The course must cover the subject matters identified in Exhibit 1, which is attached to and made a part of these rules.

(b) Responsibilities. The Director shall:

(A) Ensure the provision of an activities program as required by this rule and adherence to facility policy (OAR 411-085-0210);

(B) Plan and participate in activities inservice required by OAR 411-086-0310.

(3) Staffing. The facility shall have adequate staffing to carry out the activity program.

(4) Activities Plan. Each resident shall have an activities plan for independent and group activities which is incorporated into the comprehensive care plan. The plan shall include, but not be limited to, past and current interests and activities, skills, medical limitations, and cognitive and emotional functioning:

(a) Activity services shall be available to the resident in accordance with the preliminary resident care plan not later than 24 hours after admission;

(b) The activities plan shall be reviewed and updated as frequently as the resident's condition or needs change, but no less often than quarterly;

(c) The clinical record shall contain written instructions or orders from the resident's attending physician stating the level of activity allowed and any activity restrictions.

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(5) Documentation:

(a) The involvement of each resident shall be documented in the resident's clinical record, including the type of activity and the degree of participation;

(b) Progress notes relevant to the activities plan shall be documented in the resident's clinical record as frequently as the resident's condition changes, but no less often than quarterly.

[ED NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0240: Social Services

(1) Social Services Program. A social services program shall be provided which identifies, attains and maintains the highest practicable physical, mental and psychosocial well-being of each resident:

(a) The program shall assist facility staff, family and friends of the resident to help meet the resident's personal and emotional needs;

(b) The facility shall provide space and furnishings for social services which are readily accessible and assure privacy for interviewing, counseling and telephone conversations.

(2) Social Services Director. The facility shall employ a Social Services Director. The Director shall have a written job description which identifies the duties and responsibilities of the position and includes the requirements to be met by this rule:

(a) Qualifications. The Social Services Director shall:

(A) Have a bachelor's or master's degree in behavioral sciences (e.g., human development, psychology, sociology or counseling) with at least one year's experience in a health care setting; or

(B) An associate degree in behavioral sciences with two years' experience in a health care setting; or

(C) Receive regular on-site consultation, no less often than quarterly, from an individual who has a bachelor's or master's degree in social work or a related behavioral science, and one year's experience in a long-term care setting working directly with individual residents, and have written procedures for referring residents in need of social services to appropriate resources;

(D) The Social Services Director of a facility with more than 120 beds shall be full-time and shall meet the requirements in either paragraph (2)(a)(A) or (B) of this rule.

(b) Responsibilities. The Social Services Director shall:

(A) Interview residents and family;

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- (B) Assess the psychosocial and emotional needs of the residents;
 - (C) Participate in resident care planning conferences and social service inservices for facility staff;
 - (D) Identify and document changes in affect, behavior and personality;
 - (E) Maintain liaison with community agencies and ensure needed ancillary services are available and provided when requested;
 - (F) Help ensure that the resident's rights are provided and protected;
 - (G) Make referrals as needed and document outcomes;
 - (H) Plan and participate in facility inservice required by OAR 411-086-0310; and
 - (I) Prepare for resident's discharge as appropriate:
 - (i) The social services program staff shall educate the resident and the resident's significant others regarding the resident's rights, the resident's potential for discharge and the availability of alternate living services;
 - (ii) The social services staff shall assess the resident's potential for discharge and the availability of alternate living services no less often than quarterly;
 - (iii) The social services staff shall assist with the development and coordination of services required to effect the resident's discharge.
 - (J) Assist the resident in obtaining appropriate prosthetics that will allow for resident's optimal functioning and quality of life.
- (3) Staffing. The facility shall have adequate staffing to carry out the social services program in accordance with facility policy (OAR 411-085-0210).
- (4) Social Services Plan. Each resident shall have a social services plan incorporated into the comprehensive care plan based on the psychosocial and comprehensive assessments. The social services plan shall be reviewed and updated as frequently as the resident's condition changes, but no less often than quarterly.
- (5) Documentation. Progress notes relevant to the plan shall be documented in the clinical record as frequently as the resident's condition changes, but no less often than quarterly.

Stat. Auth.: ORS 410.070, 410.090 & 441.055

Stats. Implemented: ORS 441.055 &

441.615

411-086-0250: Dietary Services

- (1) DIETARY SERVICES DEPARTMENT. The facility shall have a dietary services department which complies with the Food Sanitation Rules, OAR chapter 333, division 150.

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- (a) Admittance to the kitchen shall be restricted to those who must enter to perform their duties, to government inspectors, or for peer review.
- (b) Written procedures for cleaning equipment and work areas shall be prepared and enforced.
- (c) Foods shall be protected from contamination during transportation.
- (d) There shall be a minimum of one week supply of staple foods and two-day supply of perishable foods on the premises.

(2) DIETARY SERVICES DIRECTOR.

(a) Qualifications. Overall supervision of the dietary service shall be assigned to a full-time dietary service director who is a registered dietician, or:

(A) Is a graduate of a dietetic technician training program (correspondence or classroom) approved by the American Dietetic Association or dietary management training approved by the American Dietary Manager Association; and

(B) Has on-site consultation provided at least monthly.

(i) The consultant shall be a registered dietician or a person with a baccalaureate degree or higher with major studies in food, nutrition, diet therapy, or food service management.

(ii) The consultant shall have at least one year of supervisory experience in an institutional dietary service and shall participate in continuing education annually.

(iii) The visits of the consultant shall be of sufficient duration to review dietary systems and assure quality food to the resident.

(b) Responsibilities. The dietary services director has responsibility, with guidance from the consultant if the director is not a registered dietician, for:

(A) Orientation, work assignments, supervision of work, and food handling technique for dietary service staff. The director shall assure that employees who have or exhibit signs of a communicable disease do not remain on duty;

(B) Participation in regularly scheduled conferences with the administrator and department heads and in the development of dietary policy (OAR 411-085-0210), procedures, and staff development programs; and

(C) Menu planning, recommending and/or ordering food and supplies to be purchased, and record-keeping.

(3) STAFFING. The facility shall employ supportive personnel to carry out functions of the dietary service. There shall be food service personnel on duty at least 12 consecutive hours each day.

(4) DIETS AND MENUS.

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(a) Diets shall be prescribed by the attending physician. Therapeutic menus shall be prepared and served as ordered.

(b) A diet manual, approved by a dietitian, shall be readily available to the attending physician, nursing and dietary service personnel. The manual shall be reviewed at least annually by the dietitian.

(A) Menus for regular and routine therapeutic diets shall be planned in writing at least three weeks in advance.

(B) The current week's menu shall be posted in the dietary department and in a location accessible and conspicuous to residents.

(C) A different menu shall be followed for each day for a minimum of twenty-one days (this does not apply to facilities using selective menus).

(D) Menus shall include fresh fruits and vegetables in season.

(E) Records of menus, as served, shall be retained for sixty days (this does not apply to facilities using selective menus).

(c) Menus shall be planned and followed to meet nutritional needs of the resident in accordance with physician orders and, to the extent medically possible, in accordance with the recommended dietary allowances in the facility diet manual (see subsection (4)(b) of this rule).

(5) FOOD PREPARATION AND SERVICE.

(a) Foods shall be prepared by methods which conserve nutritive value, flavor, and appearance. A file of recipes adjusted to appropriate yield shall be maintained.

(b) Foods shall be attractively served in a form cut, chopped, ground, or pureed to meet individual needs and delivered to residents at customarily acceptable temperatures.

(c) Residents requiring assistance with feeding shall receive timely assistance while food is at customarily acceptable temperatures.

(d) An identification system shall be established to ensure that each resident receives diet as ordered.

(e) At least three meals or their equivalent shall be served daily at regular hours with not more than a 14 hour span between the beginning of the substantial evening meal and the beginning of breakfast. A substantial evening meal is an offering of three or more menu items at one time, one of which includes a high quality protein such as meat, fish, eggs, or cheese. The meal represents no less than 25 percent of the day's total nutritional requirements.

(f) Bedtime snacks of nourishing quality shall be offered routinely to residents who desire one and for whom it is not medically prohibited. Snacks of nourishing quality are those which provide substantive nutrients in addition to carbohydrates and calories, e.g., milk and milk drinks and fruit juice.

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(g) If a resident refuses a food served, substitute foods of necessary nutritional food elements shall be offered.

(6) DOCUMENTATION. Resident's response to diet shall be recorded in the clinical record when there are significant dietary problems.

(7) DINING ASSISTANT. Facilities may use dining assistants to assist residents with feeding and hydration. "Dining Assistant" means a person 16 years of age or older who has successfully completed a Department-approved Dining Assistant training course and competency evaluation. Dining assistants include volunteers participating in facility volunteer programs who feed residents.

(a) Resident selection criteria:

(A) The facility must ensure that a dining assistant feeds and hydrates only residents who have no complicated feeding problems including, but not limited to, difficulty swallowing, recurrent lung aspirations and tube or parenteral/IV feedings.

(B) The facility Director of Nursing Services, RN Care Manager or RN Charge Nurse must assess and document resident selection for dining assistance. The resident assessment must be based on, but is not limited to:

(i) The resident's appropriateness for dining assistance;

(ii) The resident's feeding and hydration needs;

(iii) The resident's communication, behavior and interpersonal skills;

(iv) Risk factors including nausea (acute and ongoing), difficulty swallowing, seizure disorders, acute gastrointestinal issues, vomiting; and

(v) The resident's latest MDS assessment and plan of care.

(C) The documented assessment must be updated promptly after any significant change of condition and reviewed quarterly.

(b) Scope of Duties:

(A) Permitted Duties:

(i) Assist residents with eating and drinking;

(ii) Transport residents to and from dining area;

(iii) Distribute meal trays;

(iv) Ensure accurate meal delivery by verification with accompanying meal card;

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(v) Provide assistance in preparing residents for meals including, but not limited to, placement of eye glasses, washing hands and face and placement of clothing protector;

(vi) Assist with insertion of dentures for residents that can self direct care;

(vii) Set up meal tray for residents including, but not limited to, opening food packets, positioning and cutting the food;

(viii) Provide minimal assistance with positioning, as needed, for feeding and hydration and;

(ix) Measure and record food and fluid intake.

(B) Prohibited Duties:

(i) Transfer residents;

(ii) Assist with tube feeding or IV nutrition;

(iii) Assist with insertion of dentures for residents unable to self direct care;

(iv) Provide standby assistance with ambulation or activities requiring gait belt;

(v) Assist with food containing medication;

(vi) Turn, lift or extensively reposition residents; and

(vii) Other CNA tasks including oral care.

(c) Training. A Department-approved facility Dining Assistant training course must include, at a minimum, 16 hours of training and evaluation in the following topics and subject matters and as identified in Exhibit 86-2, which is attached to and made a part of these rules

(A) Training Topics:

(i) Scope of authorized duties and prohibited tasks.

(ii) Feeding and hydration techniques.

(iii) Skills for assisting with feeding and hydration.

(iv) Communication and interpersonal skills.

(v) Appropriate responses to resident behavior.

(vi) Recognizing changes in residents that are inconsistent with their normal behavior and the reporting of those changes to the registered nurse (RN) or licensed practical nurse (LPN).

(vii) Safety and emergency procedures including the abdominal thrust.

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(viii) Infection control.

(ix) Assisting residents with dementia.

(x) Resident rights.

(xi) Abuse prevention and reporting.

(B) Instructors of the Department-approved facility Dining Assistant training course must be licensed/certified in one of the following disciplines: registered nurse, registered dietician, occupational therapist or speech language pathologist.

(C) "Successful completion" means a passing score on a written exam for a Department-approved facility Dining Assistant training course and satisfactory completion of competency evaluation as determined by the instructor. A Department-approved certificate will be issued to each dining assistant upon successful completion.

(D) The Department will evaluate, select and approve at least one Dining Assistant training course curriculum which includes the topic and subject matters contained in **Exhibit 86-2**. The Department will periodically re-evaluate its selection and approval.

(d) Supervision of dining assistants

(A) Dining assistants must work under the supervision of a registered nurse or licensed practical nurse. A registered nurse or licensed practical nurse must be readily available to respond to urgent or emergent resident needs.

(B) In an emergency, dining assistants must immediately obtain appropriate staff assistance including the use of the resident call system.

(e) Facilities must ensure that dining assistants perform only those tasks for which they are trained and permitted to perform.

(f) It is the responsibility of the facility Director of Nursing Services, RN Care Manager or licensed Charge Nurse to ensure that dining assistants are oriented to the specific residents to whom they are assigned prior to providing dining assistance

(g) Maintenance of records. Facilities must maintain a record of all facility dining assistants. The record must contain a copy of each dining assistant's certificate for successful completion of a Department-approved Dining Assistant training course. Upon request, a facility will share copies of dining assistant training certificates with other facilities

[ED. NOTE: Exhibit referenced are available from the agency.]

Stat. Auth.: ORS 410.070, 410.090 & 441.055
441.615

Stats. Implemented: ORS 441.055 &

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411-086-0260: Pharmaceutical Services

(1) Consulting Pharmacist. Each facility shall have a consulting pharmacist who shall ensure compliance with ORS Chapter 689, facility policy (OAR 411-085-0210) and this rule.

(2) Pharmaceutical Services Review. The Quality Assessment and Assurance Committee shall:

(a) Develop written policies and procedures for safe and effective drug therapy, distribution and use;

(b) Oversee pharmaceutical services in the facility, monitor the service to ensure accuracy and adequacy and make recommendations for improvement; and

(c) Meet at least quarterly and document its activities, findings and recommendations.

(3) Drug Supply, Storage and Labeling:

(a) Drug Room. Facilities without a pharmacy shall have a drug room as defined in ORS Chapter 689, supervised by the consulting pharmacist. Drug rooms shall contain only prescribed (legend and non-legend) drugs, non-prescription (non-legend) stock drug supply and the emergency medication kit authorized pursuant to this rule. Locked carts or locked cupboards shall be used to prevent pilferage;

(b) Labels:

(A) All medications purchased or designated for specific residents shall be labeled as prescribed for such resident;

(B) If facility policy allows medications accompanying the resident on admission to be used, the medication must be identified as to the resident and medication and shall be authorized for use only on the written order of the attending physician.

(c) Storage. Except as provided in subsection (4)(b) of this rule, all medications shall be stored in the facility pharmacy, a drug room, or in a locked medication cart;

(d) Stock Supply:

(A) Except as provided in section (6) of this rule, a stock supply of prescription (legend) drugs may be maintained only within a licensed pharmacy;

(B) A stock supply of non-prescription drugs may be maintained in a drug room or locked medication cart, but there must be a doctor's order for administering such drugs. A stock supply of non-prescription drugs means those non-legend medications supplied in the manufacturer's original package or repackaged by a registered pharmacist and labeled in accordance with ORS Chapter 689.

(e) Resident Discharge. Medication to accompany the resident upon discharge must be on the written order of the physician;

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(f) References. References regarding use, dosage, contraindications, drug interactions, and adverse reactions shall be available on drug products used in the facility.

(4) Drug Administration:

(a) Medications prescribed to one resident shall not be administered to another;

(b) Self-administration. Facilities shall have written policies and procedures allowing self-administration of medication:

(A) All bedside medications, except nitro-glycerine, shall be stored in closed, locked cupboards or drawers;

(B) The consulting pharmacist shall specify maximum quantities of medications to be stored at bedside to ensure prevention of poisoning by confused or suicidal residents.

(c) Stop Order Policy. An automatic stop order policy shall be adopted and enforced. This policy shall provide guidance when medications ordered are not specifically limited as to time or number of doses. The policy shall be developed by the Quality Assessment and Assurance Committee.

(5) Medication Review. Medications shall be reviewed monthly by the consulting pharmacist and reordered by the physician as necessary, but no less often than quarterly. The pharmacist shall alert the DNS when drugs designated "less-than effective" ("DESI" drugs) by the Federal Food and Drug Administration have been ordered and what alternative medications may be available. The DNS shall notify the physician.

(6) Emergency Medication Kit:

(a) An emergency medication kit shall be prepared and authorized by a registered pharmacist for use in the facility in accordance with written facility policy. The contents shall be selected by the Quality Assessment and Assurance Committee;

(b) The kit shall be sealed and stored in a manner to prevent loss of drugs, but available to authorized personnel. The vendor pharmacist shall be notified when the seal is broken. A record shall be made that identifies each use of an emergency drug. The contents shall be plainly indicated on the outside of the container;

(c) Any drug removed from the kit shall be covered by a prescription and signed by the physician within 72 hours.

(7) Charges for Drugs; Choice of Supplier. See OAR 411-085-0340.

(8) Documentation. The nursing staff shall clearly and accurately document administration of pharmaceuticals and the response thereto.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

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411-086-0300: Clinical Records

(1) Clinical Records Department. The facility shall ensure the preparation, completeness, accuracy, preservation, and filing of a clinical record for each resident in accordance with facility policy (OAR 411-085-0210). This rule does not apply to nonmedical records.

(2) Director. The facility shall designate in writing a staff person to function as clinical records coordinator who shall ensure compliance with this rule. Services of a qualified medical record consultant (RRA or ART) shall be provided as needed.

(3) Staffing, Equipment. There shall be personnel, space, and equipment to provide efficient, systematic processing of clinical records including but not limited to reviewing, indexing, filing, and prompt retrieval.

(4) Filing. A system of identification and filing to ensure the rapid location of resident clinical records shall be maintained. A resident master index containing at least the full name of each resident, date of birth, clinical record number as applicable, date of admission, date of discharge, legal representative and physician of record shall be maintained.

(5) Content of Clinical Record. A clinical record shall be maintained for each resident. Each record shall contain supporting data, written in sequence of events to justify the diagnosis and warrant the treatment and results. All entries shall be kept current, accurate, dated and signed. All clinical records shall be either typewritten or recorded legibly in ink and shall include but not be limited to the following information:

(a) Admitting diagnosis and identification data including the resident's name, previous address, date and time of admission, sex, date of birth, marital status, religious preference and social security number; name, address, and telephone number of nearest relative or personal agent; place admitted from; attending physician; alternate physician (clinic or service); dentist; legal representative and RN care manager;

(b) A medical history and physical exam or medical summary as to the resident's condition which is signed by a physician. If a resident is re-admitted within 30 days for the same condition, the previous history and physical or medical summary, with an interval note signed by a physician, will suffice. If an ongoing clinical record is maintained in a comprehensive care facility, it may be used if accompanied by a physical exam report completed within the previous 30 days;

(c) Clinical reports, current, dated, and signed. Such reports include, but are not limited to, laboratory, x-ray, and results of tests/exams including those for communicable diseases;

(d) Physician's orders, current, dated and signed;

(e) Physician's progress notes dated and signed;

(f) Timely, written, dated, pertinent, complete and signed clinical observations. Clinical observations shall include changes in condition, results of treatments and medications, and unusual events. Clinical observations shall include outcome of the resident care plan and shall

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be summarized by nursing staff at least quarterly unless the resident's condition dictates otherwise;

(g) Record of medication administration including name of drug, dosage, frequency, mode of administration, date, time and signature of the person administering medication. Documentation shall also include, when applicable, site of injection, reaction, reason for withholding any medication, and reason for administering any "prn" (as needed) medication;

(h) Record of treatments administered which shall be dated, timed and signed by those performing treatments;

(i) Miscellaneous items such as releases, consent forms, mortician's receipts, valuables list and medical correspondence as applicable;

(j) Discharge summary prepared in accordance with OAR 411-086-0160 and signed by the attending physician. The summary shall include admitting diagnosis/reason for admission, summary of the course of treatment in the facility, final diagnosis with a follow-up plan if appropriate, condition on discharge or cause of death; and

(k) The "Directive to Physicians" ("Living Will"), the Power of Attorney for Health Care and similar legal documents regarding resident care directives, if any, shall be filed in the resident's clinical record in a manner which makes them prominent and conspicuous.

(6) Record Retention. All clinical records shall be kept for a period of five years after the date of last discharge of the resident. A clinical record for each resident for whom care has been provided in the previous six months shall be immediately available for review by Division representatives upon request.

(7) Resident Transfer. When a resident is transferred to another facility, the following information shall accompany the resident:

(a) The name of the facility from which transferred;

(b) The names of attending physicians prior to transfer;

(c) The name of physician to assume care;

(d) The date and time of discharge;

(e) Most recent history and physical;

(f) Current diagnosis, orders from a physician for immediate care of the resident, nursing, and other information germane to the resident's condition;

(g) A copy of the discharge summary. If the discharge summary is not available at time of transfer, it shall be transmitted as soon as available, but no later than seven days after transfer; and

(h) A copy of the current Directive and Power of Attorney for Health Care, if any.

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(8) Ownership of Records. Clinical records are the property of the licensee. The clinical record, either in original or microfilm form, shall not be removed from the control of the facility except where necessary for a judicial or administrative proceeding. Authorized representatives of the Division shall be permitted to review and obtain copies of clinical records as necessary to determine compliance with OAR 411:

(a) If a facility changes ownership all clinical records in original or microfilm form shall remain in the facility and ownership shall be transferred to the new licensee;

(b) In the event of dissolution of a facility, the administrator shall ensure that clinical records are transferred to another health care facility or to the resident's primary care physician, and shall notify the Division as to the location of each clinical record. The party to whom the records are transferred must have agreed to serve as custodian of the records.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-086-0310: Employee Orientation and In-Service Training

(1) Orientation. The nursing facility shall ensure that each employee, temporary employee, and volunteer completes an orientation program sufficient to ensure that the safety and comfort of all residents is assured in accordance with facility policies (OAR 411-085-0210). Orientation to each task must be completed prior to the employee or volunteer performing such task independently. Orientation for nursing staff and nursing assistants in training shall be supervised by a registered nurse. The orientation shall include:

(a) Explanation of facility organizational structure;

(b) Philosophy of care of the facility, including purpose of nursing facility requirements as defined in these administrative rules;

(c) Description of resident population;

(d) Employee rules; and

(e) Facility policy and procedures.

(2) Inservice. The Administrator or his/her designee shall coordinate all inservice training. Inservice training shall be designed to meet the needs of all facility staff in accordance with facility policy (OAR 411-085-0210). Each certified nursing assistant shall receive a minimum of three hours of inservice training each calendar quarter. Each calendar year the inservice training agenda shall include at least the following:

(a) Resident rights, including, but not limited to, those rights included in ORS 441.600-441.625;

(b) Rules and statutes pertaining to abuse, including, but not limited to, ORS 441.630-441.675;

(c) The transfer/discharge rules, including, but not limited to, the obligations of facility personnel to forward requests for conferences and hearings to the appropriate authorities;

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- (d) Measures to prevent cross-contamination, including universal precautions;
 - (e) Oral care, including oral screenings (required for nursing staff only);
 - (f) Emergency procedures, including, but not limited to, the disaster plan;
 - (g) Procedures for life-threatening situations, including, but not limited to, cardiopulmonary resuscitation and the life-saving techniques for choking victims (including abdominal thrust and chest thrust);
 - (h) Application and use of physical restraints (required for nursing staff only);
 - (i) Procedures to prevent residents from wandering away from the facility and how to deal with the wandering resident;
 - (j) Restorative services, including benefits thereof (required for nursing staff only);
 - (k) Activity program, including benefits thereof;
 - (l) The social services program, including benefits thereof;
 - (m) Accident prevention;
 - (n) Alzheimer's disease and other dementias, including recognition of symptoms, treatments, and behavioral management; and
 - (o) Other special needs of the facility population.
- (3) Documentation. Inservice training and orientation shall be documented and shall include the date, content, and names of attendees.

Stat. Auth.: ORS 410.070, 410.090 & 441.055
441.615

Stats. Implemented: ORS 441.055 &

411-086-0320: Disaster Preparedness

The nursing facility shall develop, maintain, and enforce a disaster plan for the protection of all persons in the event of a fire, explosion, or other emergency. Fire drills shall be conducted in accordance with the regulations of the State Fire Marshal and documented. Documentation shall include date, time, an evaluation of the drill and follow-up action.

Stat. Auth.: ORS 410.070, 410.090 & 441.055
441.615

Stats. Implemented: ORS 441.055 &

411-086-0330: Infection Control and Universal Precautions

- (1) Infection Control:

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(a) The Quality Assurance and Assessment Committee shall establish, maintain and enforce an infection control program, including universal precautions and isolation procedures, which assures protection of residents and staff from infections;

(b) The committee shall meet quarterly and as needed to review facility policies, procedures, and monitor staff performance relative to infection control. These meetings and the results thereof shall be documented;

(c) In reviewing and developing facility infection control policies and procedures, the committee shall consider all guidelines relative to infection control issued by the Division and by the Center for Disease Control, Atlanta, GA.

NOTE: Copies available through National Technical Information Service, 1-703-487-4650.

(2) Simultaneous Duties. Personnel shall not be simultaneously responsible for duties which are incompatible with sanitation. This includes prohibiting personnel from being assigned to both resident care and work in the kitchen, laundry, or housekeeping. This also prohibits personnel from having responsibility for work in the kitchen combined with laundry, housekeeping or other such conflicting tasks.

(3) Communicable Disease. Each nursing facility shall maintain compliance with the Health Division rules for communicable disease, including rules relating to tuberculosis examinations for facility personnel and residents.

(4) Soiled Laundry. Soiled linen, toweling, clothing, and sickroom equipment shall not be sorted, laundered, rinsed, or stored in bathroom, kitchen, resident rooms or clean utility areas. Soiled linen, toweling and clothing shall be stored in a separate, ventilated room. Soiled clothing shall be washed separately from soiled linen. Soiled laundry must be transported and stored in a covered container impervious to moisture.

(5) Waste Disposal. All garbage, refuse, soiled surgical dressings and other similar wastes shall be disposed of in a manner that will not create a nuisance or a public health hazard and which is consistent with the State Health Division's rules for infectious waste (OAR 333, division 056). When community garbage collections and disposal service are not available, garbage and refuse shall be disposed of by some other equally effective and sanitary manner approved by the local health officer.

(6) Clean Linen Storage. All clean linen shall be stored in clean storage rooms or cupboards easily accessible to nursing personnel. Laundry carts used for storing clean linen shall be kept covered when not in use.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 *Stats. Implemented: ORS 441.055 & 441.615*

411-086-0340: Pets

(1) Pets Allowed. Household pets (dogs, cats, birds, fish, hamsters, etc.) are permitted in the nursing facility under the following conditions:

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- (a) Pets must be clean and disease-free;
 - (b) Immediate environment of pets must be kept clean;
 - (c) Small pets (e.g., birds, hamsters) must be kept in appropriate enclosures;
 - (d) Pets not confined in enclosures must be hand held, under leash control, or under voice control; and
 - (e) Pets that are kept at the facility (or are frequent visitors) shall have current vaccinations as recommended by a designated licensed veterinarian (including, but not limited to, rabies).
- (2) **Areas Pets Prohibited.** Pets are not permitted in food preparation or storage areas. Pets shall not be permitted in any area where their presence would create a significant risk or annoyance to residents.
- (3) **Administrative Control.** The administrator or his/her designee shall determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer reasonable assurance that the pets are clean, disease-free, and vaccinated as appropriate.
- (4) **Overnight Stay.** Facilities with pets that are kept overnight shall have written policies and procedures for the care, feeding, and housing of such pets and for the proper storage of pet food and supplies.
- (5) **Birds.** Facilities with birds shall have procedures which protect residents, staff, and visitors from psittacosis. Procedures should ensure minimum handling of droppings. Droppings shall be placed in a plastic bag for disposal. Persons caring for the bird(s) shall not have nursing care or food handling responsibilities.
- (6) **Exotic Pets Prohibited.** Exotic pets (i.e., iguanas, snakes, other reptiles, monkeys, ferrets) shall not be kept at the facility. If exotic pets are brought in for a visit, they must be attended at all times by their owners. Skunks, foxes, and raccoons are not permitted in nursing facilities.

Stat. Auth.: ORS 410.070, 410.090 & 441.055
441.615

Stats. Implemented: ORS 441.055 &

411-086-0350: Smoking

- (1) **Indoor Clean Air Act.** The facility shall be in compliance with the Oregon Indoor Clear Air Act, ORS 433.835-433.875.
- (2) **Smoking Prohibited:**
- (a) Smoking shall not be allowed in any resident corridor or hallway, or at a nurses station which is open to resident corridor or hallway;
 - (b) Smoking shall not be allowed in food preparation areas;

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- (c) Smoking shall not be allowed in resident's room unless all residents therein agree;
- (d) Nothing in this rule shall prevent the licensee from designating any part of the facility or the entire facility as a non-smoking area.

(3) Common Areas. All common areas (areas accessible to residents or visitors, excluding resident rooms) shall be clearly posted with signs stating "**NO SMOKING**" or "**SMOKING AREA**" or equivalent wording. In facilities with a single room designated for a specific purpose (e.g., dining or activities), that room shall either be divided into smoking and no smoking areas or designated no smoking in its entirety. If two or more rooms are designated for a specific purpose, at least one of the rooms shall be designated no smoking in its entirety.

(4) Safety. Where residents are allowed and choose to smoke, the facility shall take adequate precautions to protect all residents from injury.

(5) Policy Changes:

(a) If facility smoking policy change, the licensee shall provide 30 days' prior written notice to all residents regarding such change;

(b) If the facility decides to designate the entire facility as a non-smoking area, all persons admitted thereafter shall be so notified by the facility prior to admission. Such facility must continue to provide an indoor smoking area for residents who smoke and were admitted prior to the facility decision.

Stat. Auth.: ORS 410.070, 410.090 & 441.055 Stats. Implemented: ORS 441.055 & 441.615

411-086-0360: Resident Furnishings, Equipment

(1) Resident Equipment:

(a) Each resident shall be provided a bed, mattress, pillow with water-proof protection, necessary bed coverings, bedside table and chair, reading light, and electrically operated call system which registers at the nurses' station. The call system cord shall be secured in a manner which makes it accessible to the resident and which prevents the resident from injuring himself/herself with it;

(b) According to his/her needs, each resident shall be provided with individual equipment, such as bedpans, bedpan covers, urinals, washbasins, emesis basins, mouthwash cups, soap, washcloths, towels, and drinking glasses;

(c) Equipment such as wheelchairs, walkers, geri-chairs and crutches shall be readily available for residents needing this equipment;

(d) After the discharge of any resident, the bed, bed furnishings, bedside furniture, and all multiple-use resident equipment shall be thoroughly cleansed and disinfected prior to re-use. Mattresses shall be professionally renovated when necessary;

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(e) Single resident use items must be identified with resident name and disposed of upon resident discharge;

(f) Hot water bags and electric heating pads or blankets may be used only on the written order of the physician;

(g) In nursing facilities caring for pediatric residents, an emergency signaling system for use by attendants summoning assistance and a two-way voice intercommunication system between the nurses' station and rooms or wards housing pediatric residents shall be provided.

(2) Storage Space. Separate storage space for clothing, toilet articles, and other personal belongings of residents shall be provided.

(3) Privacy. In multiple-bed rooms, opportunity for privacy shall be provided by flame retardant curtains or screens. Cubicle curtains or screens are not required for beds assigned to pediatric residents.

(4) Linen Supply. The use of torn or unclean bed linen is prohibited. Facilities shall have a linen supply available for at least three times the usual bed occupancy.

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DIVISION 88 – TRANSFER RULES

411-088-0000: Purpose

These Oregon Administrative Rules, OAR 411-088-0000 through 411-088-0080, shall be known as the "Transfer Rules." The purpose of these rules is to ensure that:

- (1) Unnecessary transfers do not occur;
- (2) When transfers are necessary, precautions are taken by the facility to minimize risk to the resident and to help ensure the transfer will result in an environment that is suited to meet the resident's needs; and
- (3) Residents who leave to go to a hospital, or who choose to go to any other environment (except another nursing facility), may return; and
- (4) Residents are provided with information on their rights relative to the transfer process prior to a voluntary or involuntary transfer.

Stat. Auth.: [ORS 410](#) & [ORS 411.055](#)

Stats. Implemented: [ORS 441.055](#), [ORS 441.600](#) &

[ORS 441.615](#)

411-088-0005: Definitions

As used in OAR Chapter 411, Division 088, unless the context requires otherwise, the following definitions apply:

- (1) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the Rules of the Division.
- (2) "Involuntary Transfer" means a transfer which is not a voluntary transfer as defined in this rule.
- (3) "Legal Representative" means attorney-at-law, person holding a general power of attorney or power of attorney for health care, guardian, conservator or any person appointed by a court to manage the personal or financial affairs of the resident, or person or agency legally responsible for the welfare or support of the resident, other than the facility.
- (4) "Medical Emergency" means a medical condition which, in the exercise of medical judgment, requires immediate health care of a level higher than the facility is capable of delivering.
- (5) "Notice" means a notice as specifically described within OAR Chapter 411, Division 088.
- (6) "Post-hospital extended care services" means a prescribed course of treatment following discharge from a hospital, or following outpatient surgical services or emergency treatment in a hospital.
- (7) "Private Pay Resident" means a resident who does not receive public assistance under ORS Chapters 411, 412, 413, or 414.

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(8) "Rehabilitative Services" means specialized services by a therapist or a therapist assistant to a resident to attain optimal functioning including but not limited to physical therapy, occupational therapy, speech and language therapy and audiology.

(9) "Right of Readmission" means the right to occupy the first vacancy in the facility regardless of any other waiting list following the resident's request for readmission.

(10) "Right of Return" means the right of a person to return to his/her nursing facility bed following transfer to a hospital.

(11) "Specialized Services" means a program of care including hospice, rehabilitative services, respite care, a skilled nursing treatment regime, or be a part of a cooperative effort between the nursing facility and a hospital. The skilled treatment regime must be a regime for which the facility has established a specialty and which is designed to heal or stabilize a medical condition. The cooperative effort between hospital and nursing facility must be for the purposes of assessment and evaluation, monitoring, or for a joint effort in treating a medical condition.

(12) "Transfer" means termination of an individual as a resident of a facility. The term "transfer" does not include death nor does it include a temporary relocation in which the resident's bed remains available for the resident's immediate return.

(13) "Voluntary Transfer" means a transfer for which the resident has given consent after receipt and understanding of the notice, and after the receipt and understanding of the Division's brochure, "**Leaving the Nursing Facility**".

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: [ORS 411.055](#) & [ORS 411.605](#) *Stats. Implemented:* [ORS 441.055](#), [ORS 441.600](#) & [ORS 441.615](#)

411-088-0007: Voluntary Transfer

(1) Written Consent Required. Written consent for a voluntary transfer is required. Consent must be in writing on the form provided by the Division on the back page of the brochure, "**Leaving the Nursing Facility**". If a resident has substantially impaired cognitive powers, consent may only be given by a person designated by the resident to receive notice or, if none, the resident's legal representative.

(2) Documentation. The completed consent form must be kept in the resident's clinical record.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: [ORS 410](#) & [ORS 441.055](#) *Stats. Implemented:* [ORS 441.055](#), [ORS 441.600](#) & [ORS 441.615](#)

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411-088-0010: Involuntary Transfer

Unless a transfer is voluntary, no resident may be transferred from a facility except for the reasons and according to the procedures described in these Transfer Rules. These rules shall only apply to residents in nursing facility beds or persons returning to nursing facility beds.

Stat. Auth.: [ORS 410](#) & [ORS 441](#) *Stats. Implemented:* [ORS 441.055](#), [ORS 441.600](#) & [ORS 441.615](#)

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 section (1) or section (2) of 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 care needs and the facility has identified another environment available to the resident which can better meet the resident's needs. The Division shall assist the facility in the effort.

(b) A resident may be transferred when the Division Administrator or the State Fire Marshal states in writing the safety of the resident (or other persons 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 persons 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 the revoking or declining to renew a facility's certification or license;

(f) A resident may be transferred when the facility intends to terminate operation as a nursing facility, and:

(A) Certifies in writing to the Division the license is to be irrevocably terminated; and

(B) Establishes to the satisfaction of the Division it has made arrangements to accomplish all necessary transfers in a safe manner with adequate resident involvement and follow-up or each resident to minimize negative effects of the transfer;

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(g) A resident may be transferred from a facility when the resident has been accepted for the purpose of receiving post-hospital extended care services or specialized services, as physician's orders for such facility services and has, according to the physician's written opinion, improved sufficiently so the resident no longer needs the post-hospital extended care services or specialized services provided by the facility. The purpose of the admission, including the program of care, and the expected length of stay must have been agreed to in writing by the resident (or his/her legal representative who is so authorized to make such an agreement) at or prior to admission. The facility shall identify another environment available to the resident which is appropriate to meet the resident's needs. The Notice may be issued at the time of admission or later and shall 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 resident may not be transferred if, prior to actual transfer, delinquent charges are paid. 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 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, and

(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:

(A) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature or verbal threats of a sexual nature; and

(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) Prior to the move, the facility must contact DHS Central Office by telephone and review the criteria in paragraphs (8)(c)(A)&(B) of this rule. DHS will respond within one working day of contact by the facility. The Department of Corrections parole or probation officer will be included in the review, if available. DHS will advise the facility if rule criteria for immediate move out are not met. DHS will assist in locating placement options.

(e) A written move-out notice must be completed on a 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 person lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

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(f) Prior to the move, the facility must 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 will immediately telephone DHS Central Office when a hearing is requested. The hearing will be held within five business days of the resident's move. No informal conference will be held prior to the hearing.

Stat. Auth.: ORS 441.055, 441.605, & 443.410 Stats. Implemented: ORS 441.055, 441.600, 441.615, 443.410 & 181.586

411-088-0030: Considerations Required Prior to Involuntary Transfer

Prior to issuing a notice for an involuntary transfer, in order to determine the appropriateness of transfer, the facility shall consider the following:

- (1) The availability of alternatives to transfer.
- (2) The resident's ties to family and community.
- (3) The relationships the resident has developed with other residents and facility staff.
- (4) The duration of the resident's stay at the facility.
- (5) The medical needs of the resident and the availability of medical services.
- (6) The age of the resident and degree of physical and cognitive impairment.
- (7) The availability of a receiving facility that would accept the resident and provide service consistent with the resident's need for care.
- (8) The consistency of the receiving facility's services with the activities and routine with which the resident is familiar, and the receiving facility's ability to provide the resident with similar access to personal items significant to the resident and enjoyed by the resident at the transferring facility.
- (9) The probability that the transfer would result in improved or worsened mental, physical, or social functioning, or in reduced dependency of the resident.
- (10) The type and amount of preparation for the move, including but not limited to:
 - (a) Solicitation of the resident's friends and/or family in preparing the resident for the move;
 - (b) Visitation by the resident to (prior to actual transfer) or familiarity of the resident with the place to which the resident is to be transferred.
- (11) On-site consultation by an individual with specific expertise in mental health services if the basis for considering transfer is behavioral, e.g., gero-psychiatric consultation.

Stat. Auth.: [ORS 410](#) & [ORS 441.055](#) Stats. Implemented: [ORS 441.055](#), [ORS 441.600](#) & [ORS 441.615](#)

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411-088-0040: Involuntary Transfer Prohibited

(1) The facility shall not involuntarily transfer a resident for medical or welfare reasons under OAR 411-088-0020(1)(a) through (f) if the risk of physical or emotional trauma significantly outweighs the risk to the resident and/or to other residents if no transfer were to occur.

(2) The facility shall not involuntarily transfer a resident for any other reasons under OAR 411-088-0020 if the transfer presents a substantial risk of morbidity or mortality to the resident.

Stat. Auth.: [ORS 410](#) & [ORS 441](#) *Stats. Implemented:* [ORS 441.055](#), [ORS 441.600](#) & [ORS 441.615](#)

411-088-0050: Right to Return from Hospital

(1) If a resident is transferred to a hospital, the facility shall not fill the resident's bed with another person if the resident or the resident's legal representative offers payment, or reimbursement is available from the Division, for the period of the hospital stay. If payment/reimbursement is offered or available, from or on behalf of the resident or the Division or a combination thereof, or if the facility has not complied in full with section (2) of this rule, the resident shall have the right of return to his/her bed immediately after the period of hospital stay.

(2) The Administrator, or his/her designee, is responsible for notifying the resident/legal representative and any agency responsible for the welfare or support of the resident of the option to offer payment to hold the bed prior to filling the bed with another person. This notification shall be documented in the resident's record by either the resident's or legal representative's written agreement to pay or rejection of the option to pay.

(3) If the resident is unable due to physical or mental incapacity to enter such agreement and there is no legal representative known to the facility, this fact shall be documented in the resident's record and the resident's bed may thereafter be filled upon issuance of the notice **(Exhibit 2)**.

(4) If the resident's bed has been given to another person because payment was not offered, the resident shall have priority for readmission over all other persons with a right to readmission and over any other waiting list.

(5) If a former resident or his/her legal representative requests right of return and the facility denies right of return, then the facility shall give written notice **(Exhibit 2)**.

(6) Persons with right of return have priority over all persons with right of readmission.

(7) Residents with a right of return are entitled to return to the facility immediately upon discharge from the hospital unless the resident's bed has been filled in compliance with OAR 411-088-0050 and there is no available bed in the facility.

[ED. NOTE: The Exhibit(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

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Stat. Auth.: [ORS 410](#) & [ORS 441.055](#)

Stats. Implemented: [ORS 441.055](#), [ORS 441.600](#) &

[ORS 441.615](#)

411-088-0060: Right to Readmission

(1) Any person transferred from a facility voluntarily or involuntarily shall have the right of readmission to the facility from which the person was transferred, provided that:

(a) A request for readmission is made within 180 days of the date of transfer; and

(b) The person is eligible by means of payment and requires nursing facility care; and

(c) No determination was made at informal conference or hearing that the person would not have the right of readmission.

(2) Section (1) of this rule does not require a facility to accept a person in a bed located in a room which is occupied by a resident of the opposite sex at the time of the request.

EXCEPTION: A facility is required to accept a person to a room occupied by a resident of the opposite sex if the respective resident previously shared a room in the facility and if neither resident objects to the admission.

(3) Section (1) of this rule does not require a facility to accept a person who voluntarily transferred from the facility directly to another nursing facility.

(4) If a person, or his/her legal representative, request readmission, and the facility denies readmission, then the facility shall give written notice (**Exhibit 2**).

(5) A former resident who receives Medicaid does not have the right to be readmitted to a facility which is not Medicaid certified unless reimbursement is available pursuant to OAR 411-070-0010.

(6) If more than one person has a right of readmission, priority in allocation of vacancies shall be determined by the earliest date of application for readmission.

(7) Exception. A person whose stay(s) in the facility totals 30 or fewer days and was transferred pursuant to OAR 411-088-0070(1)(d) (post-hospital extended care services or specialized services) shall not have a right of readmission.

[ED. NOTE: The Exhibit(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: [ORS 441.055](#) & [ORS 441.605](#)

Stats. Implemented: [ORS 441.055](#), [ORS 441.600](#) &

[ORS 441.615](#)

411-088-0070: Notice Requirements

(1) Notice Length:

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- (a) Any person transferred shall 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 shall 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 shall 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' Notice.
- (A) In such cases the person shall be provided with Notice no shorter than the length of current stay in the nursing facility;
- (B) The Notice shall be issued at the time of admission or as soon as the length of time for projected course of treatment can be estimated;
- (C) This subsection (OAR 411-088-0070(1)(d)) 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) shall 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 shall be notified by the facility immediately and provided written notice (**Exhibit 2**), mailed (registered or certified) or delivered in person within five (5) days from 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) Any resident may voluntarily transfer from a facility; however, the facility shall provide notice; (**Exhibit 1**) pursuant to this rule and shall maintain the signed consent form in the resident's medical record.
- (2) Notification List. The facility shall 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 his/her legal representative to receive notice of the transfer. The facility shall 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 shall be provided to:
- (a) The resident or former resident, as appropriate;

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(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 Division or type B area agency on aging. The Notice does not need to be provided to the local unit of the Division or type B area agency on aging if the resident is private pay and the resident's stay(s) in the facility total 30 or fewer 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 shall be in the same format and shall 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 shall be accompanied by a copy of the Division's brochure, "**Leaving the Nursing Facility**";

(b) If the person is a resident at the facility, the notice shall 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 this reference as a part of this rule.

[ED. NOTE: The Exhibit(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: [ORS 441.055](#) & [ORS 441.605](#) *Stats. Implemented:* [ORS 441.055](#), [ORS 441.600](#) & [ORS 441.615](#)

411-088-0080: Informal Conference and Hearing

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

(2) Conference Request:

(a) Upon receipt of a notice, the resident or any agency designated to receive the notice or person acting in 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 Division within ten days of the service or delivery of the notice. The Division shall immediately notify the licensee of the request;

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(B) The Division may extend the time allowed for requesting an informal conference if it 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 shall immediately notify the facility administrator. The administrator shall immediately thereupon provide notification to the Division.

(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 desire for an informal conference, until:

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

(B) Authorization is provided by the Hearings Officer pursuant to this section.

(3) Informal Conference:

(a) The Division will hold an informal conference as promptly as reasonably possible, but in no event later than ten days (unless a later date is agreed upon by both the facility and the persons/agencies requesting the conference) after the request is received. The Division shall give telephone notice (where a telephone number is available) and send written notice of the time and place of the 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, it will be reduced to writing and no formal hearing will be held;

(b) The proceedings will be conducted at the facility where the resident is located unless an alternate site is agreed upon by both the licensee and the persons/agencies requesting the conference;

(c) At the end of the informal conference, if the licensee wishes to proceed with the transfer, the Division shall ask if any party representing the resident wishes to request a hearing.

(4) Hearing:

(a) Hearings shall be conducted as a contested case in accordance with the Administrative Procedures Act, ORS Chapter 183, and the rules of the Division adopted thereunder. Parties to the hearing shall 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 Division receive (orally or in writing) a request for a hearing, the Division will 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(s) requesting the hearing, the hearing shall be held no later than 30 days after the informal conference;

(c) Nothing herein shall be construed to prohibit, at the election of the Division and with the consent of all interested parties, a hearing immediately following the informal conference;

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(d) The Division shall provide all persons and entities listed in OAR 411-088-0070(3) and the licensee with notification of the hearing. The hearing notification shall be served on the parties personally or by registered or certified mail;

(e) At the hearing the facility shall 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 or persons requesting the hearing shall 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/is entitled to the bed;

(B) In a hearing concerning right of return, the only question 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.

(f) The licensee shall have the burden of establishing that the transfer, or denial of return or readmission, is permitted by law;

(g) 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 shall 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 and/or to other residents if no transfer were to occur;

(B) For any other reason if the transfer presents a substantial risk of morbidity or mortality to the resident.

(h) Conclusion of Hearing. The hearing shall be 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 person to be placed consistent with his/her need for care and as consistent as possible with his/her ties, if any, with friends and family;

(ii) Soliciting and encouraging participation of the resident's friends and family in preparing the resident for transfer;

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(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;

(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 or to readmit the former resident if he or she has been transferred; or to provide the former resident with the right of return or readmission; or

(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;

(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.

(i) If the Division approves a transfer subject to one or more conditions pursuant to this rule, the transfer shall not occur until the licensee has notified the person(s) requesting the hearing and certified to the Division in writing that all of such conditions have been complied with and the Division has acknowledged to the licensee in writing the receipt and sufficiency of such certification. The Division may, upon request, allow verbal certification and give verbal acknowledgement subject to subsequent certification and acknowledgement in writing.

(5) Exceptions. A person 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) shall not be entitled to a hearing prior to transfer.

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DIVISION 89 – COMPLAINTS, INSPECTIONS AND SANCTIONS

411-089-0010: Inspections/Surveys

(1) Frequency. The Division shall, in addition to any investigations conducted pursuant to complaints, conduct a general inspection of each facility to determine compliance with nursing facility laws on a schedule consistent with the survey schedule defined by the Health Care Financing Administration, and at such other times as the Division deems necessary,

(2) Content. The general inspection will include a review of resident care practices. Results of the review shall be summarized on the survey form.

(3) Documentation: A nursing facility shall maintain all written documentation required by Oregon law. Such written documentation shall be kept on the facility premises. When documents and records are requested by the Division, the facility shall make the requested materials available to the investigator or inspector for review and copying.

Stat. Auth.: ORS 410.070, 441.055 & 441.615 Stats. Implemented: ORS 441.087, 441.050, 441.615, 441.630, 441.690, 441.695 & 441.710

411-089-0020: Sanctions, Generally

(1) Information collected during a visit by any Division or Area Agency on Aging representative, regardless of the reason for the visit, may be used as a basis for any sanction imposed by the Division.

(2) The use of any one sanction by the Division does not preclude the implementation of any other sanction(s) for the same deficiencies.

(3) The Division may seek appropriate administrative or injunctive relief prior to the completion of an investigation or inspection if it appears that a resident might otherwise be deprived of rights secured by federal or state law.

(4) If after an investigation or inspection the Division believes there is substantial evidence that a violation has occurred or is occurring, the Division may seek by administrative or judicial means to obtain such remedial relief as may be appropriate, including voluntary compliance, contested case, and injunction proceedings.

Stat. Auth.: ORS 441.055, 441.615 & 441.070 Stats. Implemented: ORS 411.050, 441.615 & 441.710

411-089-0030: Civil Penalties

(1) Considerations. In determining the amount of a civil penalty the Division shall consider:

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

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(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 is a violation which may result in a civil penalty after a single occurrence:

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

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

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

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

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

(E) 411-086-0010 - 411-086-0020 (Administrator, DNS);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) 411-088-0000 - 411-088-0080 (Rights Regarding Transfers).

(d) Violation of ORS 441.605 (Resident Rights), or OAR 411-085-0300 - 411-085-0350 (Resident Rights), any general or final order of the Division.

(3) Civil Penalties Requiring Repeat Violations. Violation of any Division 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 Division 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 per violation per day, 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 which 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.

(5) Payment to be Considered Admission of Violation. Unless the Division agrees otherwise, any payment of a civil penalty shall be treated by the Division as a violation of the statutes or rules alleged in the civil penalty notice for which the civil penalty was paid for purposes of history of the facility.

(6) Notice. The Division'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 ten days of the date the notice was mailed, the licensee shall have waived the right to a hearing.

(7) Hearing Request:

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(a) Right to Hearing. If the Division issues a notice of intent to impose a civil penalty, the licensee shall be entitled to a hearing in accordance with ORS Chapter 183;

(b) Request for Hearing. A request for a hearing must be in writing and must be received by the Division within ten (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 shall affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Division may extend the time allowed for submission of the admission/denial and affirmative defenses for up to 30 calendar days.

(8) 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 Division may enter a final order by default imposing the civil penalty. In the event of a default, the Division's file or files on the subject of the civil penalty automatically becomes a part of the record for purposes of proving the Division's prima facie case.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990 Stats. Implemented: ORS 410.070, 441.615, 441.637, 441.055, 441.715 & 441.990

411-089-0040: Nursing Facility License Denial, Suspension, Revocation

(1) Basis for Denial, Revocation -- Mandatory. A license shall be suspended and/or revoked or denied if a certificate of noncompliance is issued by the State Fire Marshal, Deputy or other approved representative pursuant to ORS Chapter 479.

(2) Basis for Denial or Revocation -- Discretionary. A license may be denied or revoked by the Division when it finds that the licensee or applicant:

(a) Failed to comply with nursing facility law such that the health, safety or welfare of residents is or was jeopardized; or

(b) Failed to substantially comply with nursing facility law during any three inspections within a five year period (for the purpose of this rule, "inspection" means an on-site visit to the facility by the Division for licensing or certification); or

(c) Has been convicted, under any state or federal law, of a felony or of a misdemeanor associated with the operation of a health care facility or agency within the previous ten years; or

(d) Had an incident of ownership of ten percent or greater in or had a management or control interest in any facility in any state when the facility was terminated from participation in the Medicaid or Medicare program, or at a time when the facility voluntarily terminated participation in the Medicaid or Medicare program during any state or federal termination process; or

(e) Had an incident of ownership of ten percent or greater in any facility in any state which failed to reimburse any state or the federal government for Medicaid or Medicare overpayments on a timely basis within the preceding five year period; or

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(f) Had an incident of ownership of ten percent or greater or a management or control interest in a health care facility or agency whose license was involuntarily suspended, revoked or not renewed within the preceding five years; or

(g) Had a nursing home administrator's license revoked, suspended or not renewed in any state (excluding revocation based on failure to pay license fee or failure to maintain required continuing education requirements when not serving as an administrator) within the preceding five year period; or

(h) Provided false, incorrect or misleading information to the Division on the license application form; or

(i) Provided false, incorrect or misleading information to the Division regarding care of residents, facility finances or resident funds; or

(j) Failed to provide workers' compensation coverage for health care facility employees when required by state law in any state; or

(k) Permitted, aided or abetted any illegal act which had a significant adverse impact on resident health, safety or welfare within the preceding five year period; or

(l) Had an incident of ownership of ten percent or greater in any health care facility in any state at a time when the facility was denied an operating license (excluding denial based upon absence of bed need); or

(m) Demonstrated fiscal instability within the preceding five years and such instability relates to the licensee/applicant's ability to provide care and/or operate a facility. Examples of fiscal instability include but are not limited to the experiencing of more than one instance of any of the following events or the experiencing of more than one of the following events:

(A) Failure to compensate employees in a timely manner;

(B) Failure to maintain in any facility an adequate inventory of medical supplies, personal supplies, or food;

(C) Failure to promptly pay any judgments, taxes, warrants or other liens;

(D) Failure to pay utility bills or other bills related to the operation or maintenance of any facility (excluding failure to pay when the facility has a clear basis to dispute the billing); or

(E) A poor credit rating; or

(n) Has demonstrated fiscal instability within the past five years by having experienced any other history of poor credit or poor financial management; or

(o) Has failed to pay a civil penalty imposed by the Division.

(3) Notice of Intent to Revoke or Deny. The Division's notice of its intent to deny or revoke a nursing facility license shall include:

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- (a) A statement that the licensee or applicant has a right to a contested case hearing or a statement of the time and place of the hearing;
 - (b) A statement of the authority and jurisdiction under which the hearing is to be held;
 - (c) A reference to the particular sections of the statute and rules involved;
 - (d) A short and plain statement of the matters asserted or charged;
 - (e) A statement that the licensee or applicant is entitled to be represented by counsel and to respond and to present evidence and argument on all issues involved;
 - (f) A statement that the record of the proceeding to date, including information in the Division file or files on the subject of the revocation or denial of the license automatically becomes part of the contested case record upon default for purposes of proving the Division's prima facie case; and
 - (g) A statement that if the licensee or applicant fails to request a hearing within 21 days of the date the notice of revocation was received, or within 60 days of the date the notice of denial was received, whichever is applicable, the licensee or applicant shall have waived the right to a hearing.
- (4) Informal Conference. When the Division issues a notice of intent to revoke or deny a license, the licensee or applicant shall be entitled to an informal conference to respond to the notice. The conference shall be held before a person authorized to issue the order or to make recommendations regarding issuance of the order. A request for an informal conference must be received in writing and must be received by the Division within ten days of the date of the notice of the intent to revoke or deny the license was received by the licensee or applicant. If the licensee or applicant fails to submit a timely request for a conference, the licensee or applicant shall have waived the right to the conference.
- (5) Hearing:
- (a) Right to Hearing. When the Division issues a notice of intent to revoke or deny a license, the licensee or applicant shall be entitled to a contested case hearing in accordance with the provisions of ORS Chapter 183;
 - (b) Request for Hearing. A request for hearing must be in writing and must be received by the Division within:
 - (A) Twenty-one days of the date the licensee received the notice of revocation; or
 - (B) Sixty days of the date the applicant received the notice of denial of licensure.
 - (c) Date of Hearing. The hearing shall be held within 60 days of the request for hearing unless the Division and the licensee or applicant agree to a later date;

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(d) Continued Operation Prohibited. A facility may not continue operation if the facility license is immediately suspended because of serious and immediate danger to resident health or safety pursuant to OAR 411-089-0040(2).

(6) Default Order. If the licensee or applicant fails to request a contested case hearing within the prescribed time period, withdraws a previous hearing request, or fails to appear at a scheduled hearing, the Division may enter an order denying or revoking the license by default. In the event of a default, the Division's file(s) on the subject of revocation or denial automatically become part of a contested case record for the purposes of proving the Division's prima facie case.

(7) Emergency Suspension Order:

(a) When the Division finds that a serious and immediate threat to resident health and safety exists, the Division may immediately suspend a nursing facility license. An emergency suspension order must be in writing. The order may be issued without prior notice to the licensee and without a prior opportunity for a contested case hearing;

(b) Except where the threat to residents is so imminent that the Division determines that pre-suspension notice is not practical, the Division will provide the licensee with a pre-suspension notice and an opportunity to object prior to issuing an emergency suspension order. The pre-suspension order shall:

(A) Describe generally the acts of the licensee and/or circumstances that would be grounds for an emergency suspension order under this rule; and

(B) Describe generally the reasons why the acts of the licensee and/or the circumstances seriously and immediately endanger resident health and safety; and

(C) Identify the person at the Division whom the licensee may contact and who is authorized to make recommendations regarding issuance of the order.

(c) If pre-suspension notice is issued, the licensee shall be entitled to an immediate opportunity to respond to the notice before a person authorized to issue the order or to make recommendations regarding issuance of the order. The emergency suspension order may be issued at any time thereafter;

(d) When an emergency suspension order is issued, the Division will serve the order on the licensee either personally or by registered or certified mail. The order shall include the following statements:

(A) The licensee's right to a hearing, or a statement of the time and place of the hearing;

(B) The authority and jurisdiction under which the hearing is to be held;

(C) A short plain statement of the matters asserted or charged;

(D) A reference to the particular sections of the statutes and rules involved;

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(E) That the licensee may elect to be represented by counsel and may respond and present evidence and argument on all issues involved;

(F) That the licensee has a right to demand that a hearing, if requested, be held as soon as practical;

(G) That if the demand for a hearing is not received by the Division within 90 days of the date of the emergency suspension order the licensee shall have waived its right to a hearing under ORS Chapter 183;

(H) The effective date of the emergency suspension order;

(I) Findings of the specific acts or omissions of the licensee that are the grounds for the suspension, and the reasons the acts or omissions seriously and immediately threaten the health and safety of the residents; and

(J) That the Division may combine the hearing on the emergency suspension order with any other Division proceeding affecting the license, and that the procedures for the combined proceeding shall be those applicable to the other proceeding affecting the license.

(e) If a timely request for a hearing is received, the Division will hold the hearing as soon as practical. At the hearing the Division shall consider the facts and circumstances, including, but not limited to:

(A) Whether the acts or omissions of the licensee pose a serious danger to resident health and safety; and

(B) Whether the circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

(8) License Expiration. If the Division determines a license has expired due to the facility's discontinued operation, the licensee has a right to an informal conference under section (4) of this rule and a hearing under section (5) of this rule. The Division may issue a default order pursuant to section (6) of this rule.

Stat. Auth.: ORS 410.070, 441.030, 441.055 & 441.615 Stats. Implemented: ORS 441.030 & 441.615

411-089-0050: Restriction of Admissions

(1) Purpose. The purpose of this rule is to protect nursing facility residents and prospective residents from threats to their health, safety and welfare, and to help ensure that the attention of facilities with serious deficiencies is directed toward correcting those deficiencies.

(2) Basis for Admission Restriction. When the Division finds an immediate threat to resident health and safety, the Division may order an immediate restriction of admissions, or may immediately restrict the number or type of admissions at the facility. An Admission Restriction Order shall be in writing and may be issued without prior notice to the licensee and without an opportunity for a contested case hearing:

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(a) In determining whether to order a restriction of admission under this rule, the Division shall consider:

(A) The needs of the residents and prospective residents;

(B) The severity of the threat to current and prospective residents; and

(C) The history of the care provided by the licensee.

(b) For the purposes of this rule, an immediate threat to resident health and safety may exist when a facility lacks adequate alarm systems including, but not limited to, call bells, fire, door alarm and/or any other means to protect against a threat to resident health and safety;

(c) For the purposes of this rule, an immediate threat to resident health and safety exists when:

(A) The Division finds a pattern of:

(i) Failure to assess or take action to prevent or treat decubitus ulcers, weight loss, infection, dehydration or other changes in the physical condition of residents; or

(ii) Failure to follow physician's orders, including failure to correctly administer medications; or

(iii) Abuse as defined by ORS 441.630, or preventable injuries; or

(B) The Division finds that any other condition or combination of conditions exists which, in the opinion of the Division, constitute an immediate threat to resident health and safety, or a potential threat to new residents.

(3) Impending Admission Restriction Notice. Except where the threat to residents is so imminent that the Division determines pre-restriction notice is not practical, the Division will provide the licensee with a pre-restriction notice and an opportunity for an informal conference at least 48 hours prior to issuing an Admission Restriction Order. The Notice of Impending Restriction of Admission may be provided in writing, sent by certified or registered mail to the licensee, or provided orally in person or by telephone to the licensee or to the person apparently in charge at the facility. When the notice is delivered orally, the Division shall subsequently provide written notice to the licensee by registered or certified mail. The pre-restriction notice shall:

(a) Describe generally the acts or omissions of the licensee and the circumstances which led to the finding that an immediate threat to resident health and safety exists at the facility;

(b) Describe generally why the acts or omissions and the circumstances create an immediate threat to resident or prospective resident health and safety; and

(c) Identify a person at the Division whom the licensee may contact and who is authorized to enter the Admission Restriction Order or to make recommendations regarding issuance of an order; and

(d) Specify the date and time the Admission Restriction Order will take effect.

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(4) Informal Conference. If an informal conference is requested, the conference shall be held at a location designated by the Division. If determined to be appropriate by the Division, the conference may be held by telephone:

(a) With Pre-Admission Restriction Notice. If a pre-admission restriction notice is issued, the licensee shall be provided with an opportunity for an informal conference to object to the Division's proposed action. The Admission Restriction Order may be issued at any time after the informal conference;

(b) Without Pre-Admission Restriction Notice. If an Admission Restriction Order is issued without prior notice, the licensee may request an immediate informal conference to object to the Division's action.

(5) Admission Restriction Order. When an Admission Restriction Order is issued, the Division shall serve the order on the licensee either personally or by registered or certified mail. The order shall include the following statements:

(a) The licensee's right to a hearing or a statement of the time and place of the hearing;

(b) The authority and jurisdiction under which the hearing is being held;

(c) A reference to the particular sections of the statute and rules involved;

(d) The effective date of the restriction;

(e) A short and plain statement of the nature of the matter asserted or charged;

(f) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee shall notify the Division;

(g) That the licensee has the right to demand that a hearing, if requested, be held as soon as practical;

(h) That if a demand for hearing is not received by the Division within 90 days of the date of the notice of the Admission Restriction Order, the licensee shall have waived the right to a hearing under ORS Chapter 183;

(i) Findings of specific acts or omissions of the licensee are grounds for the admission restriction, and the reasons these acts or omissions constitute an immediate and serious threat to the health and safety of the residents; and

(j) That the Division may combine the hearing on the Admission Restriction Order with any other Division proceeding affecting the licensee. The procedures for the combined proceeding shall be those applicable to the other proceedings affecting the license.

(6) Posting of Admission Restriction Order. A licensee who has been ordered to restrict admissions to a facility shall immediately post a "Restriction of Admissions Notice" on both the inside and outside faces of each door of the facility through which any person may enter or exit

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the facility. Such public notices shall be provided by the Division. The notices shall not be removed, altered or obscured until the restriction has been lifted by the Division. Removal of the notice without Division authorization is a Class C misdemeanor.

(7) Hearing:

(a) Right to Hearing. If the Division issues an Admission Restriction Order, the licensee is entitled to a contested case hearing pursuant to ORS Chapter 183;

(b) Hearing Request. The request for a hearing must be received within 90 days of the Admission Restriction Order;

(c) Date of Hearing. When a timely request for hearing is received, the hearing will be held as soon as practical, but not later than 30 days after the request for hearing, unless the Division and the licensee agree to a later date;

(d) At the hearing, the Division shall consider the facts and the circumstances including, but not limited to:

(A) Whether at the time of the issuance of the restriction there was probable cause from evidence available to the Division to believe there were grounds for the Admission Restriction Order;

(B) Whether the acts or omissions of the licensee posed an immediate threat to resident health and safety;

(C) Whether changed circumstances, including implementation of effective systems to help ensure deficiencies causing the restriction do not recur, eliminate the need for continuing the restriction; and

(D) Whether the agency followed the appropriate procedures in issuing the restriction.

(8) Request for Reinspection. When the licensee determines the circumstances causing the restriction no longer exist, and that effective systems are in place to help ensure similar deficiencies do not recur, the licensee may make written request to the Division for a reinspection. The Division will conduct the reinspection within 15 working days following receipt of the written request.

(9) Reinspection.

(a) If the Division finds there is no longer an immediate threat to resident health and safety as defined in this rule, and finds effective systems are in place to ensure similar deficiencies do not recur, the restriction will be lifted. The Division will notify the facility by telephone of the decision to lift or not lift the restriction within five working days from the completion of the reinspection. Telephone notification will be followed by written notification;

(b) If the Division determines an immediate threat to resident health and safety continues to exist after a reinspection, the admission restriction will not be lifted and the Division is not obligated to reinspect again for at least 45 days. A decision not to rescind the Admission

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Restriction Order shall be given to the licensee in writing and the licensee shall be informed of the right to a contested case hearing pursuant to ORS Chapter 183. Nothing in this rule is intended to limit the Division's authority to visit or inspect the facility at any time.

(10) Exceptions to Admission Restriction Order. While an Admission Restriction Order is in place, the Division, in its sole discretion, may authorize the facility to admit former residents with a right of return or right of readmission. The Division, in its sole discretion, may also authorize the facility to admit new residents for whom the Division determines that alternate placement is not feasible.

Stat. Auth.: ORS 410.070, 441.030, 441.055 & 441.615 Stats. Implemented: ORS 441.030 & 441.615

Complaints, Inspections & Sanctions

411-089-0100: Complaint Intake, Investigation

(1) Complaint Intake. The local SPD/AAA office receiving a complaint shall ask questions to obtain as much of the information requested on the SPD Complaint Intake Form as possible. The local office of the Division or Type B AAA shall have at least one person designated and available to receive complaint calls throughout the work day.

(2) Complaint Investigation.

(a) All Complaints Investigated. The Division shall ensure all complaints, including anonymous complaints, received regarding violation of nursing facility laws are investigated.

(b) Multiple Problems. If the complaint alleges more than one problem, each allegation of abuse or another rule violation shall be treated as a separate complaint, and shall be given a separate finding. This is not intended to require a separate status report or complaint investigation report for each allegation.

(c) Complainant Interview. The SPD/AAA office representative shall interview the complainant immediately and as necessary during the investigation.

(d) Accompany Investigator. The investigator shall ask if the complainant and/or a designee wish to accompany the investigator to the site. The purpose of allowing the complainant or a designee to accompany the investigator is to identify individuals and circumstances relevant to the complaint. If someone is to accompany the investigator, the investigator shall notify such party of the time and allow the party to accompany the investigator during the site visit.

(e) Timeframe to Begin Investigation. The investigations shall be initiated as follows:

(A) If the complaint alleges a resident's health or safety is in imminent danger or the resident has recently, died, been hospitalized or been treated in an emergency department the on-site investigation shall begin within two hours of the complaint.

(B) If the complainant alleges circumstances that could result in abuse and the circumstances could place a resident's health or safety in imminent danger, the on-site investigation shall begin prior to the end of the first work day following receipt of the complaint.

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(C) All other complaint investigations shall begin and be completed within 90 days following receipt of the complaint.

(f) Prior Notification Prohibited. The Division/AAA shall not contact the facility prior to the on-site investigation.

(g) Facility Visit. The investigation shall include at least one unannounced visit to the facility. Upon arrival at the facility, the investigator shall announce his/her presence to the administrator or other person designated to be in charge. The investigator shall explain the purpose of the visit unless the investigator has reason to believe that disclosing the purpose of the visit would impede the investigation.

(h) Witness Interview. Reasonable effort shall be made to interview all possible witnesses, including the alleged perpetrator(s), if any, the resident(s) and any other person(s), including residents, identified by any source as having personal knowledge about the allegation(s).

(A) Investigators have the authority to conduct the interview in private unless the witness expressly makes an unsolicited request that a third party be present.

(B) The investigator shall obtain the mailing address of the alleged perpetrator.

(C) If the investigator is unable to interview a witness identified by the complainant, the complainant shall be notified before the investigation is concluded.

(i) Investigation Format. In addition to interviews, the investigator shall make personal observations of physical circumstances and review documentation, including clinical records. The facility shall promptly provide all requested documentation available for review and copying.

Stat. Auth.: ORS 410.070, 441.055 & 441.637 Stats. Implemented: ORS 441.637 & 441.650

411-089-0110: Initial Status Report (Abuse Complaints Only)

(1) Initial Status Report for Abuse Investigations (Local SPD/AAA Office). Except in cases where the investigation is part of a general inspection pursuant to federal law, the Division or Type B AAA shall complete an Initial Status Report for all abuse investigations within two work days of the start of the investigation.

(2) Content. The Initial Status Report shall include:

(a) A summary of the complaint identifying each alleged incident or problem. The Initial Status Report shall not include names of residents, complainants or other people interviewed during the investigation;

(b) The status of the investigation:

(c) Whether the complaint was filed at the direction of facility administration:

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(d) A determination of whether action to protect the resident(s) is needed and whether the facility must take action:

(e) The name and telephone number of the investigator:

(f) The projected date the Complaint Investigation Report will be completed; and

(g) A statement that the Complaint Investigation Report will be available upon request after the Division issues a Letter of Determination.

(3) Distribution. The Initial Status Report shall be provided either in person or by mail to the following individuals as soon as practical, but no later than two work days after its completion:

(a) The complainant, unless the complainant waives the requirement;

(b) If the complaint involves a specific resident or residents, to the resident(s) or person(s) designated to receive information concerning the resident(s);

(c) A representative of the Long Term Care Ombudsman, upon request:

(d) The facility; and

(e) SPD Central Office.

(4) Availability of Initial Status Report. The Initial Status Report shall be placed in the local SPD/AAA facility files and available for public inspection upon completion.

Stat. Auth.: ORS 410.070, 441.055 & 441.637 Stats. Implemented: ORS 441.637 & 441.650

411-089-0120: Complaint Investigation Report (Local SPD/AAA Office)

(1) Report Required. The investigator shall write a complaint investigation report after each investigation is completed.

(2) Content. The complaint investigation and the findings shall be summarized on the SDS Complaint Investigation Report Form. The Form shall not include the names of any resident, complainant or person(s) interviewed. The investigation report shall include:

(a) The nature of the allegation(s);

(b) The investigator's personal observations relating to relevant evidence, including the date(s) and time(s) of each incident (as appropriate);

(c) A summary of the documents reviewed;

(d) A summary of each interview.

(e) The investigator's findings regarding the incident or problem alleged in each allegation; and

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(f) The factual basis for the finding.

(3) Investigator's Conclusions. For each alleged wrong doing the investigator shall prepare a separate evaluation and written conclusion. The conclusion shall be:

(a) The alleged wrong doing is substantiated;

(b) The alleged wrong doing is not substantiated; or

(c) The investigator is unable to determine whether the alleged wrong doing is substantiated or not substantiated because necessary, relevant information could not be obtained; or that following a complete investigation, a reasonable person could not objectively conclude whether it was likely the wrong doing occurred.

(4) Timeframe for Completion Processing (Local Office).

(a) If a complaint alleges abuse, the complaint report shall be completed within 5 work days after the investigation is completed, but not later than 62 days after receipt of the complaint.

(b) All other complaint investigation reports shall be completed within 90 days of the receipt of the complaint.

(c) Investigation reports shall be sent to SPD Central Office promptly upon completion.

Stat. Auth.: ORS 410.070, 441.055 & 441.637 Stats. Implemented: ORS 441.637, 441.650 & 441.676

411-089-0130: Division Findings for Complaint Investigations (Central Office)

Central Office Review. The Division shall review the Complaint Investigation Report and any evidence submitted with the report.

(1) Central Office Determination. The Division shall review the Complaint Investigation Report and shall determine for each alleged violation there is:

(a) "Substantiated abuse" (a reasonable person could objectively conclude it is more likely than not abuse occurred), including identification of rule violated;

(b) "Substantiated, non-abuse" (a reasonable person could objectively conclude it is more likely than not a rule violation, other than abuse, occurred), including identification of rule violated;

(c) "Unsubstantiated" (a reasonable person could objectively conclude it is unlikely any rule violation occurred); or

(d) "Unable to Substantiate" (an investigation could not be completed because necessary, relevant information could not be obtained; or that following a complete investigation, a reasonable person could not objectively conclude whether it was more or less likely a rule violation occurred).

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(2) If the Division determines there is substantiated abuse, the Division shall determine whether the facility was responsible, or individual(s) responsible, or both. In determining responsibility, the Division shall consider intent, knowledge, ability to control, and adherence to professional standards, as applicable.

(a) Facility Responsible. Examples of when the Division shall determine the facility is responsible for the abuse include but are not limited to the following:

(A) Failure to provide minimum staffing in accordance with OAR 411-086-0100(2) without reasonable effort to correct; or

(B) Failure to check for or act upon relevant information available from a licensing board; or

(C) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff; or

(D) Failure to adequately train or orient staff; or

(E) Failure to provide adequate supervision of staff/residents; or

(F) Failure to allow sufficient time to accomplish assigned tasks; or

(G) Failure to provide adequate services; or

(H) Failure to provide adequate equipment or supplies; or

(I) Failure to follow orders for treatment or medication.

(b) Individual Responsible. Examples of when the Division shall determine the individual is responsible shall include but are not limited to:

(A) Intentional acts against a resident(s) including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse;

(B) Acts contradictory to clear instructions from facility, unless the act is determined by the Division to be caused by a "facility problem" such as those identified in paragraph (2)(b)(A) of this rule:

(C) Callous disregard for resident rights or safety; or

(D) Intentional acts against a resident's property (e.g., theft, misuse of funds).

(c) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

Stat. Auth.: ORS 410.070, 441.055 & 441.637 Stats. Implemented: ORS 441.637, 441.650, 441.665 & 441.677

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411-089-0140: Letters of Determination

Within 60 days of receipt by SPD Central Office of the Investigation Report, the Division shall issue a Letter of Determination.

(1) Content. The Letter of Determination shall:

- (a) Explain the nature of each allegation;
- (b) Include the date and time of each occurrence;
- (c) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated or unable to substantiate;
- (d) For each substantiated allegation, state whether the violation was abuse or another rule violation;
- (e) For each substantiated allegation of abuse, explain the Division's determination of responsibility;
- (f) Include a copy of the complaint investigation report;
- (g) State that the complainant, any individual found responsible for abuse, and the facility have 10 days to provide additional or different information; and
- (h) Explain, when applicable, if sanctions (e.g., civil penalty, license revocation) are pursued, a formal appeal process shall be available.

(2) Appeal Rights, Nursing Assistant. The Letter of Determination, in cases of substantiated abuse by a nursing assistant, shall:

- (a) Explain the finding of abuse is intended to be entered into the Nursing Assistant Registry;
- (b) Explain the nursing assistant may provide additional information for inclusion in the Nursing Assistant Registry if provided within 10 days;
- (c) Explain the Nursing Assistant Registry;
- (d) Include information on the opportunity to request an administrative review. The letter shall advise the nursing assistant he/she has 10 days to respond in writing with different or additional information, 30 days to request the informal administrative review in writing and shall explain the consequences of failure to respond; and
- (e) Explain if the opportunity for administrative review expires without a request for review by the nursing assistant, the nursing assistant shall be found responsible for the abuse and the finding shall be entered in the Nursing Assistant Registry.

(3) Distribution.

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(a) The Letter of Determination shall be mailed to the facility, the complainant (if known) and the SPD or Type B AAA office;

(b) The Letter shall be sent by certified mail or delivered in person to any nursing assistant found responsible for abuse. In the case of a nursing assistant, notice sent to the nursing assistant's last known address is sufficient to meet the requirements of subsection (3)(b) of this rule;

(c) The Letter shall also be mailed to any health related board(s) or agency which certified or licensed a person determined to be responsible for abuse.

EXCEPTION: If the party determined to be responsible is a nursing assistant, the Letter shall not be mailed to the State Board of Nursing except as provided by OAR 411-089-0150; and

(d) A copy of the Letter shall be placed in the Division's facility complaint file.

(4) Revision.

(a) The Division may reinvestigate a complaint and/or issue a revised Letter of Determination if the Division determines further information provided by the complainant, accused individual, or facility merits such action.

(b) If the Division issues a revised Letter, the Letter shall be distributed to all persons identified in section (3) of this rule.

Stat. Auth.: ORS 410.070, 441.055 & 441.637 Stats. Implemented: ORS 441.637 & 441.677

411-089-0150: Administrative Review for Nursing Assistants (Abuse)

If the Division finds a nursing assistant to be responsible for abuse as defined in OAR 411-085-0005, the nursing assistant is entitled to an administrative review if requested in writing within 30 days of the mailing of the Letter of Determination.

(1) Review Panel. The administrative review shall be conducted by a panel of three persons, consisting of:

(a) One person from the Division's management staff;

(b) One person who is a registered nurse and is on the staff of or a member of the State Board of Nursing; and

(c) One person who is on the staff of the Department of Human Services but not on the Division's staff and who has expertise in an area related to nursing care in a facility.

(2) Scheduling:

(a) The review panel shall be conducted in Salem unless the panel directs otherwise;

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(b) The panel shall attempt to conduct the review at a time and date convenient to the nursing assistant; and

(c) The panel may allow participation by telephone.

(3) Format of Administrative Review:

(a) The review panel shall consider notarized statements of the nursing assistant and witnesses submitted by the nursing assistant. The nursing assistant may, instead of a notarized statement, submit a statement which concludes with the following: "I hereby swear (or affirm) the above statement is true," the signature of the author of the statement, and the date the statement is signed.

(b) The nursing assistant may either appear before and address the panel in person, address the panel by telephone at a scheduled time, or submit a written reason why the Letter of Determination should be changed. The panel may ask the nursing assistant questions.

(c) The review panel shall consider the Letter of Determination and all written and oral statements of and submitted by the nursing assistant. The panel may request supplemental information from the Division. A copy of any supplemental information shall be provided to the nursing assistant. The nursing assistant shall have an opportunity to respond to any supplementary information before the panel adopts a recommendation.

(d) The panel shall, based upon majority vote, submit a recommendation to the Division administrator or his/her designee identifying the information considered and recommend whether the Letter of Determination should be changed or adopted.

(4) Decision:

(a) Timeframe. The Division administrator or his/her designee shall issue a decision after consideration of the review panel's recommendation. The decision shall be issued within 120 days of the request for review.

(b) Basis. The decision must be supported by substantial evidence in the record.

(c) Content. The decision shall include Findings of Fact and Conclusions as to whether the abuse occurred and whether the nursing assistant is responsible.

(d) Distribution. The written decision shall be mailed to the nursing assistant and the facility. If a nursing assistant is determined by the Division administrator or his/her designee to be responsible for abuse, the Division shall ensure the information is provided to the State Board of Nursing and is placed in the Nursing Assistant Registry within 10 days.

(5) Failure to Request Review or to Appear:

(a) If the nursing assistant fails to request an administrative review in writing within 30 days of the Letter of Determination, or if scheduled to attend the review, fails to attend, the Division shall affirm the Letter of Determination and notify the State Board of Nursing of its finding. The abuse finding shall be entered into the Nursing Assistant Registry.

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(b) If the nursing assistant is scheduled to appear, but fails to attend at the scheduled time or within 15 minutes thereafter, the nursing assistant shall be considered to have waived the right to the review. The review may be rescheduled if:

(A) A written request to reschedule the review is received by the Division within 10 days after the scheduled review; and

(B) The cause(s) for not attending at the scheduled time for the review and for not requesting a postponement from the review panel prior to the review were beyond the control of the nursing assistant.

(6) Judicial Review. The nursing assistant found to be responsible for abuse shall be provided notice of the opportunity for judicial review pursuant to ORS 183.484 (judicial review for orders other than contested cases). This notice shall accompany or be incorporated within the administrative review decision.