

Guidance for Completing Move-Out Notices for Residential Care and Assisted Living Facilities

Changes have been made to Oregon Administrative Rule (OAR) 411-054-0080, which outlines the requirements for Involuntary Move-Out Notices. These changes are being made to ensure the facility has considered every option for each resident's successful stay.

There are long-standing requirements for a facility to accurately and comprehensively describe in their disclosure information (OAR 411-054-0026) the health, nursing, behavioral, and other care services the facility provides and does not provide, which includes:

- Uniform Disclosure Statement
- Residency Agreement; and
- Consumer Summary Statement

In addition, there is the expectation that through the evaluation and service-planning process the facility considers what services can be made available to ensure the resident can have their needs met.

It is recommended that the facility review and update the following:

- The facility's disclosure information as required in OAR 411-054-0026 to ensure it accurately reflects the health, nursing, behavioral and care services that are provided in the facility. Information in all these documents must be in accordance with Chapter 411, Division 54.
- The facility's policies and procedures that pertain to the 30-Day Involuntary Move-Out notice and the Less Than 30 Day Involuntary Move-Out Notice.

Both the 30-Day Involuntary Move-Out Notice, and the Less Than 30 Day Involuntary Move-Out Notice require review by ODHS. ODHS has two business days to inform the facility if criteria were met or not. ODHS reviews the information to:

- Understand the specific circumstances for the Notice.
- Understand the interventions put in place in an attempt to resolve the issue(s) that lead to a Move-out Notice.
- Ensure that the resident and/or their responsible party had been informed regarding what services the facility does and does not provide.
- Ensure the resident's rights are protected.

Additionally, depending on the circumstances or reasons for the move-out, ensure the facility is meeting the resident's needs even if temporary, which may require additional staffing and/or services provided on an intermittent basis.

Following are new procedures for issuing the 30-Day Involuntary Move-Out Notice and the Less Than 30 Day Involuntary Move-Out Notice.

30 Day Involuntary Move-Out Notice: OAR 411-054-0080 (2 – 9)

The facility must submit the 30 Day Involuntary Move-Out Notice (form 0567) via email to SOQ.Transfers@dhsola.state.or.us.

The facility must identify the reason(s) why the resident is being given the move-out notice. Criteria for move-out includes:

- Personal care needs (ADLs) exceed the level of services provided by the facility, as specified in the facility's disclosure information.
- Resident engaged in behavior or actions that have repeatedly and substantially interfered with the rights, health, or safety of residents or others.
- A medical condition that is complex, unstable, or unpredictable and exceeds the level of health services as specified in writing in the facility's disclosure information.
- Unable to evacuate to a point of safety during fire drills in the required time per OAR 411-054-0090.
- Resident exhibits behavior that poses a danger to self or others.
- Resident engaged in illegal drug use or has committed a criminal act that causes potential harm to themselves or others.
- Non-payment of charges owed to the facility.

Prior to issuing the Notice, the facility is required to communicate with the resident and/or their legal representative as to the reasons for the move-out to resolve the issue(s). This communication is to be documented.

ODHS Review of 30-Day Involuntary Move-Out Notice:

Prior to issuing the Notice to the resident, ODHS must review the following:

- Documentation of communication(s) with the resident or their legal representative in an effort to resolve issues prior to considering the Notice.
- The two most recent service plans which demonstrate modifications made in an attempt to resolve the reasons for the move-out notice. If move-out is for non-payment, service plans do not need to be submitted.
- Any other relevant documentation that supports the facility's reason for the proposed move-out.
- For non-payment, documentation that demonstrates the facility has communicated with the resident or their legal representative regarding non-payment of the bill. Documentation may include past due invoices and/or demand letters and if there has been a referral to Adult Protective Services.
- ODHS may also contact parties or witnesses to obtain additional information regarding the issues surrounding the Notice.
- ODHS may review the facilities disclosure information to determine what health, nursing, behavioral and care services the facility provides or does not provide.
- ODHS will respond to the facility within two business days after receipt of the Notice and supplied documentation as to whether the Notice complies with the move-out criteria as outlined in rule.
- If it is determined that **the Notice does not meet the requirements**, the facility cannot issue the Notice. However, the facility may submit the Notice again along with additional documentation that may satisfy the criteria. When this happens, ODHS will have an additional two business days to review and inform the facility if the Notice complies with the criteria outlined in rule.
- If the **Notice does meet the requirements**, it can be issued along with the [Request for Administrative Hearing](#) (form MSC 0443) to the resident and/or their responsible party. The notice must also be sent to:
 - ODHS at SOQ.Transfers@dhs.ohs.state.or.us.
 - The Long-Term Care Ombudsman's Office, email ltco.info@oregon.gov or Fax: 503-373-0852
 - The resident's case manager if applicable.

Hearing Request Process:

- The resident or their legal representative or the Long-Term Care Ombudsman may request, either verbally or in writing, a hearing within **10 working days** after the Notice was issued by checking the box on page 2 of the Notice and completing the Administrative Hearing Request (form MSC 0443).
- If a hearing is requested the facility is responsible for sending the Request for Administrative Hearing to SOQ.Transfers@dhsosha.state.or.us. ODHS will forward the request to Office of Administrative Hearings (OAH). The request may not be forwarded immediately in the event an informal conference may be requested.
- ODHS may extend the time allowed requesting an informal conference or administrative hearing if ODHS determines that good cause exists for failure to make a timely request.
- ODHS may hold an informal conference at the request of the resident, their legal representative, or the Long-Term Care Ombudsman to resolve the matter. If resolved, then no formal hearing will be held.
- The administrative law judge (ALJ) who facilitates the hearing for OHA may schedule a pre-hearing conference to determine the facts of the notice and see if there can be a resolution to eliminate the need for a hearing. If there is no resolution, a hearing date will be set and the ALJ will request documentation from each party to prepare for the hearing.
- If the hearing takes place, the facility, the resident or responsible party (or advocate) will each present their facts.
- The ALJ determines as to whether the move-out should take place or not and will provide the determination in writing.

Less Than 30 Day Move-Out Notice: OAR 411-054-0080 (11 – 17)

A Less than 30 Day Move-Out Notice may be considered in the two circumstances listed below:

1. A resident has been admitted or treated at a health care facility for a significant medical or psychiatric event. At the time the resident is to return to the facility, qualified facility staff have evaluated the resident's health, medical, behavioral or care needs and have determined the facility is unable to meet the resident's needs pursuant to section (1) of this rule due to the resident's significant and ongoing change of condition related to a medical or psychiatric event, whether that event was the reason for leaving the facility for treatment, or arose while the resident was being treated at the health care facility.

(A) A "significant medical or psychiatric event" is defined as a serious illness, injury, impairment, or physical or mental condition that results in a change of condition such that the facility cannot meet the needs of the resident, and the resident requires inpatient care in a health care facility on a continuing and permanent basis.

(B) For the duration of the resident's time in the health care facility, a facility must stay informed of the status of the resident's health by communicating with the health care facility on a consistent, ongoing basis.

(C) When a resident has been admitted or treated at a health care facility for a significant medical or psychiatric event, once the health care facility has given notice to the facility that the resident is ready to be discharged to return to the facility, qualified facility staff shall evaluate the resident's health, medical, behavioral or care needs within a reasonable time, but no later than 24 hours after the resident has been deemed ready for discharge. A qualified facility staff is defined as the facility nurse, administrator, or the administrator's designee.

2. If the health or safety of the resident or others is in jeopardy and undue delay in moving the resident increases the risk of harm.

Review of the Less Than 30 Day Involuntary Move-Out Notice (SDS 0568):

Prior to issuing the Notice to the resident or their legal representative, the facility must send the following to ODHS for review:

- The Less Than 30 Day Move-Out Notice (form 0568) via email to SOQ.Transfers@dhsosha.state.or.us

- Additional documentation may include, but not limited to:
 - The two most recent service-plans if applicable.
 - If resident is in the hospital, provide the evaluation that the facility qualified staff person completed.
 - Documentation that demonstrates the efforts taken to address all service needs of the resident, including providing intermittent direct nursing services or obtaining home health, hospice, or a third-party referral, as required by rule.
 - Documentation demonstrating compliance with 411-054-0070(1) and 411-054-0030(2)(b), which includes an explanation of whether the facility can respond to 24-hour care needs and assist residents to access health care services from outside vendors, as defined by 411-054-0045(1) and (2).
 - Additional documentation that supports the facility's reasons for proposing a Less Than 30-day Involuntary Move-out Notice. Documentation may include related progress notes, relevant Medication Administration Record(s), evaluations, clinical assessments, physician notes, and other documentation demonstrating the facility has attempted to staff resident's temporary or intermittent needs, as required by OAR 411-054-0045(1)(f)(F).
 - Disclosure information as required in OAR 411-054-0026 which includes the facility's Residency Agreement, Consumer Summary Statement, and the Uniform Disclosure Statement.
 - Names and contact information of additional parties or witnesses, as appropriate, to obtain additional information regarding the reason for the move.

- After the review ODHS will respond in writing within two business days to the facility whether the criteria for the notice have been met. If it is determined the criteria are not met, the facility must not issue the Notice. However, the facility may resubmit the Notice along with more documentation that could satisfy the criteria outlined in OAR 411-054-0080 (13).

Issuing the Less Than 30 Day Involuntary Move-Out Notice:

- If the criteria are met, the Notice may be issued along with the Administrative Hearing Request (MSC 0443). If the resident is still at the facility, the facility must allow at least 24 hours for the resident to move from the facility.

- On the same day the notice is issued to the resident or their legal representative, a copy of the notice must be sent to:
 - ODHS at SOQ.Transfers@dhsosha.state.or.us

- The Long-Term Care Ombudsman's Office, email ltco.info@oregon.gov or Fax at 503-373-0852.
- The Resident's case manager if applicable.

Hearing Request Process:

- The resident or their legal representative or the Long-Term Care Ombudsman may request, either verbally or in writing, a hearing within **five working days** after the notice was issued by checking the box on the Notice and completing the Administrative Hearing Request (form MSC 0443).
- The facility must immediately inform ODHS of the resident's request for a hearing and email ODHS the completed Administrative Hearing Request to SOQ.Transfers@dhsosha.state.or.us. ODHS will forward to the Office of Administrative Hearings (OAH). When the resident is not allowed to return or be in the facility, ODHS will request an expedited hearing to be held within five (5) days.
- ODHS may hold an informal conference within four (4) business days at the request of the resident, their legal representative, or the Long-Term Care Ombudsman to resolve the matter. If resolved, then no formal hearing will be held.
- ODHS may extend the time allowed requesting an informal conference or administrative hearing if ODHS determines that good cause exists for failure to make a timely request.
- The hearing is held before an administrative law judge (ALJ). If the hearing takes place, the facility, the resident or responsible party (or advocate) will each present their facts to the ALJ.
- The ALJ determines as to whether the move-out should take place or not and will provide their determination in writing.
- When a resident has been moved out of the facility, the facility is not allowed to charge the resident room and board pending the outcome from the hearing.