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TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

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APD 35-2020

CHAPTER 411
DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

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

EFFECTIVE DATE: 08/14/2020 THROUGH 02/09/2021

AGENCY APPROVED DATE: 08/14/2020

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Filed By:
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NEED FOR THE RULE(S):

The Department needs to immediately amend rule to improve the review process for involuntary move-out notices and to ensure alignment with the program's intent and practices.

JUSTIFICATION OF TEMPORARY FILING:

Failure to act promptly and immediately amend OAR chapter 411, division 054 will result in serious prejudice to the public interest, the Commission, residential care and assisted living facility providers and individuals living in residential care and assisted living facilities. These rules need to be adopted promptly as lack of sufficient clarity relating to the involuntary move-out notice process could result in negative outcomes and unnecessary loss of residence for residents of long term care facilities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

AMEND: 411-054-0080

RULE SUMMARY: Amends rule to require explicit Department review of involuntary move-out notices issued by residential care and assisted living facilities and to clarify conditions for when a less-than-30-day notice may be issued.

CHANGES TO RULE:

411-054-0080
Involuntary Move-out Criteria ¶

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

(1) Information must be specified in the facility's disclosure information that describes the types of health, nursing, behavior, and care services the facility is unable to provide. The minimum required services identified in OAR 411-054-0030 (Resident Services) must be provided before a resident may be asked to move-out. In addition, facilities indorsed under OAR chapter 411, division 057 (Indorsement of Alzheimer's Care Units) must provide services to support residents with the progressive symptoms of the disease.¶
(2) The facility must give written notification on form SDS 0567 to the resident, the resident's legal representative, and case manager, if applicable, when the facility requests a resident to move from the facility. The resident must be given 30 days advance written notice to move from the facility unless criteria in section (~~6~~10) of this rule are met.¶
(3) The facility must demonstrate through service plan modification and documentation, attempts to resolve the reason for the move-out.¶
(4) A resident may be asked to move from a facility if one or more of the following circumstances exists:¶
(a) The resident's needs exceed the level of ADL services the facility provides as specified in the facility's disclosure information;¶
(b) The resident engages in behavior or actions that repeatedly and substantially interferes with the rights, health, or safety of residents or others;¶
(c) The resident has a medical or nursing condition that is complex, unstable or unpredictable, and exceeds the level of health services the facility provides as specified in the facility's disclosure information;¶
(d) The facility is unable to accomplish resident evacuation in accordance with OAR 411-054-0090 (Fire and Life Safety);¶
(e) The resident exhibits behavior that poses a danger to self or others;¶
(f) The resident engages in illegal drug use, or commits a criminal act that causes potential harm to the resident or others; or¶
(g) Non-payment of charges.¶
(5) The facility shall consult with the Department prior to issuing the notice. ¶
(6) After the consultation described in (5) of this rule, the Department will review the notice for compliance with these requirements.¶
(7) The Department will respond, in writing, to the facility within two business days of receipt of notice submitted pursuant to section (6) of this rule with a compliance determination.¶
(8) The facility must rescind the notice if the Department determines the criteria has not been met.¶
(9) The facility must fax or email a copy of the move-out notice to the Department's central office in Salem. Where a resident lacks capacity and there is no legal representative, a copy of the notice to move-out must be emailed or faxed to the State Long-Term Care Ombudsman who may request an informal conference and administrative hearing for the resident.¶
(~~6~~10) LESS THAN 30-DAY NOTICE. The resident must be given 30 days advance written notice before being moved from the facility, except in the following unusual circumstances:¶
(a) A resident ~~who~~ leaves the facility ~~to receive urge~~for a significant medical or psychiatric ~~care may return to the facility unless~~event and, at the time the resident is to return, facility staff have re-evaluated the resident's needs and have determined that the facility is unable to meet the resident's needs pursuant to section (1) of this rule and the Consumer Summary Statement due to the resident's significant and ongoing change of condition related to the medical or psychiatric event.¶
(A) An appropriate facility staff person must re-evaluate the resident's condition before determining the facility is unable to meet the resident's needs.¶
(B) A written notice on form SDS 0568 must be given to the resident or the resident's legal representative ~~on the date the facility makes its determination~~after the Department has reviewed and approved the notice pursuant to section (10)(c) of this rule. The written notice shall contain the specific reasons the facility is unable to meet the resident's needs, as determined by the facility's evaluation.¶
(C) If the resident or resident's designee requests an administrative hearing, the facility must hold the resident's room or unit and may charge room and board payment pending resolution of the administrative hearing.¶

(b) 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, the facility may give less than 30 days advance written notice on form SDS 0568.¶
(A) The Department's central office in Salem must be consulted and alternatives reviewed before the resident receives the notice.¶
(B) The resident is entitled to request an administrative hearing, as stated in section (~~7~~11) of this rule.¶
(C) If the resident is moved out of the facility and requests an administrative hearing, the facility must hold the resident's room, without charge for room and board or services, pending resolution of the administrative hearing.¶
(c) The written notice under (10)(a) or (10)(b) must be submitted to the Department's central office in Salem for review before it can be issued to the resident or the resident's legal representative.¶
(A) The Department will review the notice for compliance with these requirements, including but not limited to:¶
(i) Examining evidence or explanation submitted by the facility that the facility has applied section (3) of this rule, taking into account the service requirements as stated in OAR 411-054-0070(1), 411-054-0030(2)(b), and 411-054-0045(1) and (2); and¶
(ii) Contacting parties or witnesses, as appropriate, for additional statements or evidence regarding the reason for move.¶
(B) The Department will respond, in writing, to the facility within two business days of receipt of notice regarding whether the criteria for a less than 30-day notice have been met.¶
(C) The facility must rescind the notice when the Department determines the criteria has not been met.¶
(D) When the Department determines the criteria has been met, the facility must provide the notice to the resident at least 24 hours before the resident can be transferred. ¶
(d) The facility must fax or email a copy of the move-out notice to the Department's central office in Salem and the State Long-Term Care Ombudsman Office on the same day the notice is delivered to the resident or the resident's legal representative.¶
(~~7~~ The resident may seek review of the notice with the Administrator of the Safety, Oversight and Quality Unit.¶
(11) ADMINISTRATIVE HEARING. Except when a facility has had its license revoked, not renewed, voluntarily surrendered, or terminates its Medicaid contract, a resident who receives an involuntary move-out notice is entitled to an administrative hearing, provided the resident or resident's designee requests a hearing in a timely manner.¶
(a) A resident who receives a 30-day notice to move has 10 working days to request an administrative hearing after receipt of the notice. The Department's central office in Salem must be notified of all hearing requests.¶
(b) The Department's central office in Salem shall notify the Office of Administrative Hearings of the resident's request for a formal administrative hearing.¶
(c) The Department may hold an informal conference to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, no formal hearing shall be held.¶
(d) A resident who is not allowed to return to the facility after receiving medical or psychiatric care, or who is immediately moved out of the facility to protect the health or safety of the resident or others, as specified in section (~~6~~10) of this rule, has five working days to request an administrative hearing after receiving the move-out notice.¶
(A) The Department's central office in Salem must be notified by telephone, email, or fax of a resident's request for hearing.¶
(B) When the resident is not allowed to remain in the facility, the Department's central office in Salem shall request an expedited administrative hearing.¶
(e) The facility may not rent the resident's unit pending resolution of the administrative hearing.¶
(~~8~~12) A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met:¶
(a) The facility was not notified before admission that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime.¶
(b) The facility learns the resident is on probation, parole, or post-prison supervision after being convicted of a sex

crime.¶
(c) The resident presents a current risk of harm to another resident, staff, or visitor in the facility, as evidenced by:¶
(A) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; or¶
(B) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.¶
(d) Before the move, the facility must contact the Department's central office in Salem by telephone and review the criteria in sections (~~8~~12)(c)(A) and (B) of this rule. The Department shall respond within one working day of contact by the facility. The Department of Corrections parole or probation officer must be included in the review, if available. The Department shall advise the facility if rule criteria for immediate move-out are not met. DHS shall assist in locating placement options.¶
(e) A written move-out notice must be completed on form SDS 0568A. The form must be filled out in its entirety and a copy of the notice delivered in person, to the resident, or the resident's legal representative, if applicable. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out shall be immediately faxed or emailed to the State Long Term Care Ombudsman.¶
(f) Before the move, the facility shall orally review the notice and right to object with the resident or legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary move-out. The facility shall immediately telephone the Department's central office in Salem when a hearing is requested. The hearing shall be held within five business days of the resident's move. No informal conference shall be held before the hearing.
Statutory/Other Authority: ORS 410.070, 443.450
Statutes/Other Implemented: ORS 443.400 - 443.455, 443.991