DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 89

NURSING FACILITIES/LICENSING - COMPLAINTS, INSPECTIONS, AND SANCTIONS

411-089-0030 Civil Penalties

(Amended 04/01/2016)

(1) For purposes of imposing civil penalties, facilities licensed under ORS 441.015 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) For purposes of this rule:

(a)"Resident rights" means that each resident must be assured the same civil and human rights accorded to other citizens as described in OAR 411-085-0310 through 411-085-0350.

(b) “Harm” means a measurable negative impact to a resident’s physical, mental, financial or emotional well-being.

(c) “Minor harm” means harm resulting in no more than temporary physical, mental or emotional discomfort or pain without loss of function, or in financial loss of less than $1,000.

(d) “Moderate harm” means harm resulting in temporary loss of physical, mental or emotional function, or in financial loss of $1,000 or more, but less than $5,000.

(e) “Serious harm” means harm resulting in long-term or permanent loss of physical, mental or emotional function, or in financial loss of $5,000 or more.

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

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

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

~~(c) The gravity of the violation, including the actual and potential threat to health, safety, and well-being of residents, the duration of the threat or number or times the threat occurred, and the number of residents threatened~~scope of the violation as defined in XXX.XXXX~~;~~

~~(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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Violation of OAR 411-070-0470 (2) (3), (5), (6), (8) (Nursing Assistant Training and Competency Evaluation Programs Reimbursement).

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

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

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

(5) The director shall assess the severity of a violation using the following criteria:

(a) Level 1 is a violation that results in no actual harm or in potential for only minor harm.

(b) Level 2 is a violation that results in minor harm or potential for moderate harm.

(c) Level 3 is a violation that results in moderate harm or potential for serious harm.

(d) Level 4 is a violation that results in serious harm or death.

(6) The director shall assess the scope of a violation using the following criteria:

(a) An isolated violation occurs when one or a very limited number of residents or employees are affected or a very limited area or number of locations within a facility are affected.

(b) A pattern violation occurs when more than a very limited number of residents or employees are affected, or the situation has occurred in more than a limited number of locations but the locations are not dispersed throughout the facility.

(c) A widespread violation occurs when the problems causing the deficiency are pervasive and affect many locations throughout the facility or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees.

~~(4) AMOUNT OF CIVIL PENALTY~~.

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

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

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

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

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

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

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

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

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

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

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

~~(iii) "Sexual abuse" means any form of sexual contact between an employee of a nursing facility or a person providing services in the nursing facility and a resident of that facility, including, but not limited to, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.~~

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

(7) Determining Civil Penalties.

(a)The director may impose a civil penalty under ORS 443.455(2)(a), ORS XXX.XXX and ORS 441.710 on a nursing facility pursuant to this section.

(b) When imposing a civil penalty on a facility pursuant to this section, the director shall consider:

(A)~~(b)~~ Any prior violations of laws or rules pertaining to the facility and, as a mitigating factor, whether violations were incurred under prior ownership or management of the facility.~~;~~

(B)The financial benefits, if any, realized by the facility as a result of the violation.

(C) The facility's past history of correcting violations and preventing the reoccurrence of violations.~~;~~

(D)The severity and scope of the violation.

(8)~~9)~~ Civil penalty amounts.

(a) The director may impose civil penalties as follows:

(A) For a level 1 violation, the director may not impose a civil penalty.

(B) For a level 2 violation, the director may impose a penalty in an amount no less than $250 per violation, not to exceed $500 per violation.

(C) For a level 3 violation, the director may impose a civil penalty in an amount no less than $500 per violation, not to exceed $1,500 per violation.

(D) For a level 4 violation, the director may impose a civil penalty in an amount no less than $1,500 per violation, not to exceed $2,500 per violation.

(E) For a failure to report abuse of a resident to the Department of Human Services as required by state law, the director may impose a civil penalty in an amount no more than $1,000 per violation.

(b) The penalties imposed under paragraph (a)(A) to (D) of this section may not exceed $20,000 in the aggregate for violations occurring in a single facility within any 90-day period.

(c) In imposing civil penalties under this section, the director may take into account the scope of the violation.

(9)~~5)~~ Additional Civil Penalties. The Department shall impose a civil penalty of not less than $2,500 and not more than $15,000 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed $40,000~~-~~ for all violations occurring in a single facility within any 90-day period.

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

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

(B) The conduct resulting in the abuse was likely to cause a negative outcome by a person with a duty of care toward a resident of a facility; and

(C)~~(iii)~~ The abuse resulted in the death, serious injury, rape or sexual abuse of a resident.

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

(A) ~~(A)(i)~~"Negative Outcome" includes serious injury, rape, sexual abuse or death.

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

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

(D) "Sexual Abuse" means any form of sexual contact between an employee of a nursing facility or a person providing services in the facility and a resident of that facility, including but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

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

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

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

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

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

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

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

(11) A notice of civil penalty shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved.

(b) A short and plain statement of the matters asserted or charged.

(c) A statement of the amount of the penalty or penalties imposed.

(d) A statement of the party's right to request a hearing.

(e) A description of specific remediations the facility must make in order to achieve substantial compliance.

(f) A statement specifying the amount of time for the elimination of the violation:

(A) Not to exceed 30 days after the first notice of a violation; or

(B) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

(12) Hearing Request.

(a) For a level 2 or level 3 violation, the Department shall hold in abeyance the penalty proposed for the period of time specified in the Notice pursuant to ORS xxx.xxx(7)(a) and section (11)(f) above. (Currently Section 4(7)(a) of HB 3359) The person to whom the notice is addressed shall have 10 calendar days from the date specified in the Notice to ORS xxx.xxx(7)(a) and section (11)(f) above (Currently Section 4(7)(a) of HB 3359) to make written application for a hearing before the Department.

(b) For all other penalties, the person to whom the notice is addressed shall have 10 calendar days from the date of postmark to make written application for a hearing before the Department.

(13) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(14) If the person notified fails to request a hearing within the time specified in the notice-, an order may be entered by the Department assessing a civil penalty.

(15) If, after a hearing, the Department prevails, an order may be entered by the Department assessing a civil penalty.

(16) A civil penalty imposed by the Department are subject to be remitted or reduced upon the following terms:

(a) When imposing penalties for a violation that qualifies as abuse that results in less than serious harm, the penalty shall be reduced by not less than 25 percent if the facility self-reported the abuse to the Department.

(b) If the facility achieves substantial compliance for a level 2 or 3 violation as specified in the notice pursuant to ORS XXX.XXX (7)(a) and section 11(e) and (f) above, the Department shall withdraw some or all of the penalty.

(c) Upon such terms and conditions as the Department considers proper and consistent with the public health and safety. (Currently Section 4(5) of HB 3359)

(17) If the order is not appealed, the amount of the penalty is payable within 10 calendar days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 calendar days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(18) A violation of any general order or final order pertaining to a nursing facility issued by the Department is subject to a civil penalty.

(19) Judicial review of civil penalties imposed under ORS 441.710 shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

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

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

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

~~(9) HEARING REQUEST.~~

> ~~(a) If the Department issues a notice of intent to impose a civil penalty, the licensee is entitled to a hearing in accordance with ORS chapter 183.~~
>
> ~~(b) A request for a hearing must be in writing and must be received by the Department within 10 days of the date the notice of intent to impose a civil penalty was mailed to the licensee. The hearing request must include an admission or denial of each factual matter alleged in the notice and must affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Department may extend the time allowed for submission of the admission or denial and affirmative defenses for up to 30 calendar days.~~

~~(10) DEFAULT ORDER. If a hearing is not timely requested, if the licensee withdraws a hearing request, or fails to appear at a scheduled hearing, the Department may enter a final order by default imposing the civil penalty. In the event of a default, the Department's file on the subject of the civil~~

~~penalty automatically becomes a part of the record for purposes of proving the Department's prima facie case.~~

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

411-089-0050 ~~Restriction of Admissions~~Conditions
(Amended ~~06~~xx/~~28~~xx/~~2015~~xxxx)

(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 the attention of facilities with serious deficiencies is directed toward correcting those deficiencies.

(2) For the purpose of these rules, the following definitions apply:

(a) "Immediate Jeopardy" means a situation in which the failure of a nursing facility to comply with a rule of the Department has caused or is likely to cause serious injury, serious harm, serious impairment or death to a resident.

(b) "Substantial Compliance" means a level of compliance with state law and with rules of the department such that any identified deficiencies pose no actual harm or no more than potential for minor harm to the health or safety of residents of a facility.

(3) The department may impose a condition on the license of a nursing facility in response to a substantiated finding of rule violation included but not limited to a substantiated finding of abuse or in response to a finding of immediate jeopardy, whether or not the finding of immediate jeopardy is substantiated at the time the license condition is imposed.

(4) If the department imposes a license condition in response to a finding of immediate jeopardy to residents of the facility, and the finding of immediate jeopardy to residents of the facility is not substantiated within 30 days after the imposition of the license condition, the department shall immediately remove the license condition.

(5) Conditions may be attached to a license upon a finding that:

(a) Information on the application or inspection requires a condition to protect the health and safety of residents;

(b) There exists a threat to the health, safety, and welfare of a resident;

(c) There is reliable evidence of abuse, neglect, or exploitation; or

(d) The facility is not being operated in compliance with these rules.

(6) Conditions that may be imposed on a licensee include, but are not limited to:

(a) Restricting the total number of residents;

(b) Restricting the number and impairment level of residents based upon the capacity of the licensee and staff to meet the health and safety needs of all residents;

(c) Requiring additional staff or staff qualifications;

(d) Requiring additional training for staff;

(e) Requiring additional documentation; or

(f) Restriction of admissions, if the Department makes a finding of immediate jeopardy that is likely to present an immediate jeopardy to future residents upon admission.

(7) NOTICE OF IMPENDING IMPOSITION OF LICENSE CONDITION.

(a) Except where the threat to residents is so imminent ~~that~~ the Department determines -it is not safe or practical to give the facility advance notice, the Department will provide the licensee with a Notice of Impending Imposition of License Condition (Notice) at least 48 hours prior to issuing an Order Imposing License Condition

(Order). The Notice 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 represented by facility staff to be in charge at the facility. When the Notice is delivered orally, the Department must subsequently provide written notice to the licensee by registered or certified mail. The Notice must:

(A) Describe the acts or omissions of the licensee and the circumstances that led to the substantiated finding of a rule violation, including but not limited to a substantiated finding of abuse, or finding of immediate jeopardy supporting the imposition of the license condition;

(B) Describe why the acts or omissions and the circumstances create a situation for which the imposition of a license condition is warranted;

(C) Provide a brief statement identifying the nature of the impending condition;

(D) Provide a brief statement describing how the license condition is designed to remediate the circumstances that lead to the license condition;

(E) Provide a brief statement of the requirements for withdrawal of the license condition;

(F) Identify a person at the Department whom the licensee may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order;

(G) Specify the date and time an informal conference will be held, if requested by the licensee; and

(H) Specify the date and time the Order will take effect.

(b) -If the threat to residents of a facility is so imminent that the Department determines it is not safe or practical to give the facility advance notice, the Department must provide the notice required

under section (3)(a) within 48 hours after issuing an order imposing the license condition.

(8) INFORMAL CONFERENCE. If an informal conference is requested, the conference will be held at a location designated by the Department. If determined to be appropriate by the Department, the conference may be held by telephone.

(a) With Notice. If a Notice of Impending License Condition is issued, the licensee must be provided with an opportunity for an informal conference to object to the Department's proposed action before the license condition is scheduled to take effect. The Order Imposing License Condition may be issued at any time after the informal conference.

(b) Without Notice. If an Order Imposing License Condition is issued without a prior Notice of Impending License Condition, the licensee may request an immediate informal conference to object to the Department's action.

(9) ORDER IMPOSING LICENSE CONDITION. When an Order Imposing License Condition (Order) is issued, the Department must serve the Order to the licensee either personally or by registered or certified mail.

(a) The Order must include the following statements:

(A) The authority and jurisdiction under which the condition is being issued;

(B) A reference to the particular sections of the statute and administrative rules involved;

(C) The effective date of the condition;

(D) A short and plain statement of the nature of the matters asserted or charged;

(E) The specific terms of the license condition;

(F) Provide a specific description describing how the scope and manner of the license condition is designed to remediate the circumstances that lead to the license condition;

(G) Provide a specific description of the requirements for withdrawal of the license condition;

(H) Statement of the licensee's right to request a hearing;

(I) 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 must notify the Department;

(J) That, if a request for hearing is not received by the Department within 21 calendar days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183;

(K) Findings of specific acts or omissions of the licensee that are grounds for the license condition, and the reasons these acts or omissions create a situation for which the imposition of a license condition is warranted; and

(L) That the Department may combine the hearing on the Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.

~~(2) Basis for Admission Restriction. When the Department finds an immediate threat to resident health and safety, the Department 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.~~

~~(a) In determining whether to order a restriction of admission under this rule, the Department 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 or door alarms, 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 Department 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;~~

~~(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.~~

~~(B) The Department finds any other condition or combination of conditions exist that in the opinion of the Department, 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 Department determines pre-restriction notice is not practical, the Department must provide the licensee with a pre-restriction notice and an opportunity for an informal conference at least 48 hours before 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 in charge at the facility. When the notice is delivered orally, the Department 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;~~

~~(c) Identify a person at the Department whom the licensee may contact 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 takes effect.~~

~~(4) Informal Conference. If an informal conference is requested, the conference shall be held at a location designated by the Department. If determined to be appropriate by the Department, 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 Department'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 Department's action.~~

~~(5) Admission Restriction Order. When an Admission Restriction Order is issued, the Department 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 Department;~~

~~(g) That the licensee has the right to demand a hearing, if requested, be held as soon as practical;~~

~~(h) That if a demand for hearing is not received by the Department 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 Department may combine the hearing on the Admission Restriction Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding shall be those applicable to the other proceedings affecting the license.~~

(10)~~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 the facility. Such public notices shall be provided by the Department. The notices shall not be removed, altered, or obscured until the restriction has been lifted by the Department. Removal of the notice without the Department's authorization is a Class C misdemeanor.

~~(7) Hearing:~~

~~(a) Right to Hearing. If the Department 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 must be held as soon as practical, but not later than 30 days after the request for hearing, unless the Department and the licensee agree to a later date.~~

(11) HEARING.

(a) Right to Hearing. If the Department imposes an Order (Order Imposing License Conditions), the licensee is entitled to a contested case hearing pursuant to ORS chapter 183.

(b) Hearing Request. The Department must receive the licensee's request for a hearing within 21 calendar days of the date of the Order. If a request for hearing is not received by the Department within 21 calendar days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183.

(c) Licensee’s request for a hearing does not delay enforcement of the license condition.

(d) Date of Hearing. When a timely request for hearing is received, the hearing will be held as soon as practical.

(e) Consolidation. If a request for hearing is received on an Order, and a subsequent Order is issued, the Department may consolidate into a single contested case hearing.

(f)~~d)~~ At the hearing, the Department 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 Department 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.

(12) REINSPECTION OR REEVALUATION

(a) Assertion of substantial compliance: Following the Order Imposing License Condition (Order) on a facility, the Department shall:

(A) Within 15 business days of receipt of the facility's written request for reinspection the Department shall reinspect or reevaluate the facility to determine if the facility has achieved substantial compliance. The request must be based on the facility's assertion of substantial compliance with the requirements set forth by the Department for withdrawal of the license condition.

(B) Notify the facility by telephone or electronic means of the findings of the reinspection or reevaluation within five business days after completion of the reinspection or reevaluation; and

(C) Issue a written report to the facility within 30 business days after the reinspection or reevaluation notifying the facility of the Department's determinations regarding substantial compliance with the requirements necessary for withdrawal of the license condition.

(b) If the Department finds that the facility has achieved substantial compliance regarding the violation for which the license condition was imposed, and finds that systems are in place to ensure similar deficiencies do not reoccur, the Department shall withdraw the Order.

(c) If after reinspection or reevaluation, the Department determines that the violation for which the license condition was imposed continues to exist, the Department may not withdraw the Order, and the Department is not obligated to reinspect or reevaluate the facility again for at least 45 business days after the first reinspection or reevaluation.

(A) The Department shall provide notice of the decision not to withdraw the Order to the facility in writing.

(B) The notice shall inform the facility of the right to a contested case hearing pursuant to ORS chapter 183.

(d) If the Department does not meet the requirements of section 12 regarding reinspection or reevaluation, a license condition is automatically removed on the date the department failed to meet the requirements of this section, unless the Director of Human Services extends the applicable period for no more than 15 business days. The director may not delegate the power to make a determination regarding an extension under this paragraph.

(e) Nothing in this section limits the Department's authority to visit or inspect the facility at any time.

~~(8) Re-inspection.~~

~~(a) Request for Re-inspection. 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 Department for a re-inspection. The Department must conduct the re-inspection within 15 working days following receipt of the written request.~~

~~(b) If the Department finds there is no longer an immediate threat to resident health and safety, and finds effective systems are in place to ensure similar deficiencies do not recur, the restriction must be lifted. The Department must notify the facility by telephone of the decision to lift or not lift the restriction within five working days from the completion of the re-inspection. Telephone notification must be followed by written notification.~~

~~(c) If the Department determines an immediate threat to resident health and safety continues to exist after a re-inspection, the admission restriction is not lifted and the Department is not obligated to re-inspect again for at least 45 days. A decision not to rescind the Admission 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 Department's authority to visit or inspect the facility at any time.~~

(13~~9~~) Exceptions to Admission Restriction Order. While an Admission Restriction Order is in place, the Department, in its sole discretion, may authorize the facility to admit former residents with a right of return or right of readmission. The Department, in its sole discretion, may also authorize the facility to admit new residents for whom the Department 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