

**DEPARTMENT OF HUMAN SERVICES  
SENIORS AND PEOPLE WITH DISABILITIES DIVISION  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411  
DIVISION 73**

**NURSING FACILITIES/MEDICAID - REMEDIES**

**411-073-0000 Purpose**  
*(Effective 10/1/1995)*

The purpose of these rules is to define the process through which the Seniors and People with Disabilities Division may impose remedies against Medicaid-only certified nursing facilities when such facilities fail to comply with the federal statute or Code of Federal Regulations (CFR). These rules are issued pursuant to 42 CFR 488.400 et. seq. and apply to all surveys performed on or after September 1, 1995. The remedies are designed to correct nonconforming conditions and to ensure prompt facility compliance with the CFR and consistency in facility performance. The federal Health Care Financing Administration (HCFA) is responsible for implementing similar remedies for Medicare and Medicare/Medicaid (dually-certified) facilities.

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

**411-073-0010 Definitions**  
*(Effective 10/1/1995)*

As used in these rules (OAR Chapter 411, Division 73) unless the context requires otherwise, the definitions in OAR 411-070-0005, OAR 411-085-0005, and following definitions apply:

(1) "Deficiency" means a facility's failure to meet a requirement of participation as specified in 42 CFR Part 483 et.seq. (Subpart B).

(2) "Directed Plan of Correction" means a course of action specified by the federal Health Care Financing Administration (HCFA), the Division or person designated by the Division which requires a facility to take specific actions to correct deficiencies within specified timeframes.

(3) "Facility" means a nursing facility licensed by the Division pursuant to OAR 411-085-0010 and certified for Medicaid, Medicare or both, or, if the context suggests, an owner, employee or other party acting (or failing to act) in behalf of the facility.

(4) "HCFA" means the federal Health Care Financing Administration.

(5) "Immediate Family" means a husband or wife; natural or adopted parent, child or sibling; stepparent, stepchild, stepbrother or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law; grandparent or grandchild.

(6) "Immediate Jeopardy" means a situation in which a facility's non-compliance with one or more requirements of participation or conditions of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual receiving care in the facility.

(7) "New Admission" means a person admitted on or after the effective date of a denial of payment remedy. A resident temporarily absent from the facility to go to a general hospital, other health care setting, or home, etc. and was not discharged from the facility, shall not be considered to be a new admission.

(8) "Noncompliance" means any deficiency that causes a facility to not be in substantial compliance.

(9) "Plan of Correction" means a written description of the actions to be taken by a facility in order to correct deficiencies, and which has been approved by the Division or HCFA. The Plan shall include the dates by which the deficiencies will be corrected. Unless otherwise provided by these rules, the Plan of Correction is prepared by the facility.

(10) "Requirement of Participation" means a provision under the Code of Federal Regulations, Title 42, Part 483 or 488, or provision of the Social Security Act.

(11) "Standard Survey" means a periodic, resident-centered inspection which gathers information about the quality of service furnished in a facility to determine compliance with the requirements for participation.

(12) "Statement of Deficiencies" means a written description of deficiencies prepared by HCFA or the Division.

(13) "Substandard Quality of Care" means one or more deficiencies in 42 CFR §483.13 Resident Behavior and Facility Practices, 42 CFR §483.15 Quality of Life, or in 42 CFR §483.25 Quality of Care, that constitutes either immediate jeopardy to resident health and safety; or a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy and with no actual harm. NOTE: See Exhibit 1 (OAR 411-073-0040).

(14) "Survey Exit Date" means the last day of a standard survey by the Division or HCFA.

(15) "Work Day" means Monday, Tuesday, Wednesday, Thursday or Friday, excluding State holidays.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-073-0020 Statement of Deficiencies/Plan of Correction**

*(Effective 10/1/1995)*

(1) Statement of Deficiencies. When the Division identifies a facility's failure to comply with federal regulations, the Division shall document such failure(s) on a federal Statement of Deficiencies form HCFA 2567. The Statement of Deficiencies shall be accompanied by a notification of the informal dispute resolution process.

(2) Plan of Correction.

(a) When Required. Except as otherwise provided by this rule, the facility receiving a Statement of Deficiencies shall develop, submit to the Division, and begin implementing a Plan of Correction (POC)

within 10 days of receiving the Statement of Deficiencies. A Plan of Correction is required regardless of whether remedies are imposed. A Plan of Correction is not an enforcement remedy.

(b) Form. The Plan shall be documented on the federal Statement of Deficiencies form HCFA 2567.

(c) Isolated Deficiencies. A Plan of Correction is not required if the Division declares on the Statement of Deficiencies that "the deficiencies are isolated, no harm has resulted, and there is no potential for anything more than minimal harm."

(d) Approval. All Plans of Correction submitted by a facility are subject to approval by the Division. A facility shall not delay implementation of its Plan of Correction because it has not yet received approval from the Division. If approval is denied, the facility shall have five days to submit an acceptable revised Plan of Correction.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

### **411-073-0030 Remedies Generally**

*(Effective 10/1/1995)*

(1) Remedied Available. In addition to the remedies which may be provided pursuant to OAR Chapter 411, Division 89, one or more of the remedies listed in these rules (OAR Chapter 411, Division 73) may be imposed by the Division when a facility fails to comply with federal statute or regulations. The remedy(s) issued by the Division may be based upon findings of noncompliance with one or more requirements of participation.

(2) Factors To Be Considered. In order to determine the seriousness of the deficiency, and the appropriate remedy to pursue, if any, the Division:

(a) Shall consider whether a facility's noncompliance resulted in harm, whether there was a potential for harm, the degree of actual and/or potential harm, and/or whether there was immediate jeopardy;

(b) Shall consider whether the deficiencies are isolated, constitute a pattern, or are widespread; and

(c) May consider the relationship of the deficiency to other deficiencies and the facility's history of noncompliance.

(3) Appeal. When the Division issues a remedy, the facility may dispute the findings of noncompliance upon which the remedy is based. Except as otherwise provided by these rules, the Division's choice of remedy, including the factors considered by the Division in selecting the remedy, is not subject to appeal. The process for disputing a Division finding is found in OAR 411-073-0120 and 411-073-0140.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-073-0040 Categories of Remedies**

*(Effective 10/1/1995)*

(1) Category 1 Remedies. Category 1 remedies include one or more of the following:

(a) Directed Plan of Correction (including directed inservice training);

(b) Directed inservice training; or

(c) Division monitoring (state monitoring).

(2) Category 2 Remedies. Category 2 remedies include one or more of the following:

(a) Denial of Medicaid payment for new admissions;

(b) Denial of Medicaid payment for all residents if imposed on the state by HCFA; or

(c) Civil money penalties of \$50 to \$3,000 per day.

(3) Category 3 Remedies. Category 3 remedies include one or more of the following:

- (a) Temporary management;
- (b) Civil money penalties of \$3,050 to \$10,000 per day;
- (c) Closure of the facility in emergency situations and/or transfer of residents; or
- (d) Termination of the Division's Provider Agreement.

(4) Medicaid Remedies Matrix. Exhibit 1, "Medicaid Remedies Matrix," defines the circumstances under which the different categories of remedies shall or may be issued. Exhibit 1 is incorporated and made a part of these rules.

- (a) Once a particular level of noncompliance is determined by the Division, the matrix indicates which category of remedies are required and optional.
- (b) Required Remedies. When a category or remedy is "required", the Division shall impose one or more of the remedies in that category and/or initiate termination of certification.
- (c) Optional Remedies. When a category is optional, the Division may impose one or more of the remedies under that category in addition to the required remedies.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

### **Specific Remedies**

#### **411-073-0050 Directed Plan of Correction** *(Effective 10/1/1995)*

(1) When Imposed. The Division may require a Directed Plan of Correction:

(a) When isolated deficiencies or a pattern of deficiencies result in actual harm or a potential for more than minimal harm, including immediate jeopardy; or

(b) In any other situation under which a category 1 remedy is required or optional in Exhibit 1.

(2) Required Action. Facilities shall adopt and implement a Directed Plan of Correction prescribed in part or in whole by the Division when required by the Division. The Directed Plan of Correction may include, but is not limited to, outside consultation, training for facility staff and employment of additional staff.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-073-0060 Directed Inservice Training**

*(Effective 10/1/1995)*

(1) When Imposed. The Division may require Directed Inservice Training:

(a) When isolated deficiencies or a pattern of deficiencies result in actual harm or a potential for more than minimal harm, including immediate jeopardy; or

(b) In any other situation under which a category 1 remedy is required or optional in Exhibit 1.

(2) Required Action. Facilities shall implement a Directed Inservice Training prescribed by the Division when required by the Division.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-073-0070 Monitoring by the State**

*(Effective 10/1/1995)*

(1) When Imposed. The Division may initiate state monitoring under these rules:

(a) When a facility is not in substantial compliance with one or more requirements of participation and is in the process of correcting deficiencies;

(b) When a facility has corrected deficiencies and verification of continued substantial compliance is needed;

(c) When the Division has reason to question the substantial compliance of the facility with one or more requirements of participation;

(d) When a facility has been cited with substandard quality of care deficiencies on the last three consecutive standard surveys; or

(e) In any other situation under which a category 1 remedy is required or optional in Exhibit 73-1.

(2) Required Action.

(a) Reports. Monitors shall prepare written reports at the request of the Division describing facility progress toward correcting deficiencies. Monitors may request written information on facility progress to be prepared and submitted by facility staff.

(b) Access to facility. Monitors shall have the same access to residents, staff and documentation as inspectors/surveyors under OAR 411-089-0010.

(c) Monitors. The monitor(s) shall not:

(A) Be an employee of the facility;

(B) Serve as a consultant to the facility; or

(C) Have an immediate family member be a resident of the facility.

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

**411-073-0080 Denial of Payment for New Admissions**  
(Effective 10/1/1995)

(1) When Imposed. The Division may deny payment for new Medicaid admissions:

- (a) When there are widespread deficiencies constituting no actual harm, but with a potential for more than minimal harm;
- (b) When there is at least one deficiency constituting actual harm to a resident;
- (c) When the Division finds that the facility is not in substantial compliance three months after the last day of a survey in which the facility was found to not be in substantial compliance;
- (d) When the Division finds substandard quality of care on the last three consecutive standard surveys;
- (e) When there is immediate jeopardy; or
- (f) In any other situation under which a category 2 remedy is required or optional in Exhibit 1.

(2) Required Action. When the Division determines that there is cause pursuant to section (1) of this rule, the Division shall deny payment for new Medicaid admissions.

(3) Resumption of Payment. The Division may resume payment for new admissions when the facility achieves substantial compliance and is capable of remaining in substantial compliance as determined by HCFA or the Division.

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

## **411-073-0090 Civil Money Penalties**

*(Effective 10/1/1995)*

(1) When Imposed. The Division may impose a civil money penalty for each day a facility is or was not in substantial compliance with one or more requirements of participation. The penalty may be imposed in any situation under which a category 2 or 3 remedy is required or optional in Exhibit 1.

(2) Required Action.

(a) Amount.

(A) Except as otherwise provided by this rule, if deficiencies do not constitute immediate jeopardy but cause actual harm or have potential of causing more than minimal harm, the penalty shall be an amount not less than \$50 nor more than \$3,000 per day of violation (amounts set in \$50 increments).

(B) If deficiencies constitute immediate jeopardy, the penalty shall be an amount not less than \$3,050 nor more than \$10,000 per day of violation (amounts set in \$50 increments).

(C) Except as otherwise provided by this rule, if deficiencies constituting immediate jeopardy are resolved and immediate jeopardy is removed but noncompliance continues, the daily penalty shall be reduced to an amount not less than \$50 nor more than \$3,000, as determined by the Division.

(D) If deficiencies not constituting immediate jeopardy become more serious and immediate jeopardy exists, the daily penalty shall be increased to an amount not less than \$3,050 nor more than \$10,000, as determined by the Division.

(E) If the Division determines a facility is not complying with a requirement of participation and a civil money penalty was imposed during or subsequent to the previous standard survey for deficiencies within the same requirement of participation, the Division shall issue another civil money penalty for a higher

amount. Penalties for such repeat deficiencies may exceed the range established by paragraphs (2)(a)(A) and (C) of this rule.

(F) The Division shall discontinue accrual of the civil money penalty on the day the Provider Agreement is terminated or on the day the Division determines substantial compliance was achieved, whichever is sooner.

(b) Factors to Consider. In setting the amount of the civil money penalty within the ranges established by subsection (2)(a) of this rule, the Division shall consider:

(A) The facility's noncompliance history;

(B) The facility's financial condition (the facility shall be responsible for supplying the Division with financial information if the facility believes its financial condition should be a mitigating factor);

(C) The factors described in section (2) of OAR 411-073-0030; and

(D) The facility's degree of culpability including, but not limited to, neglect, indifference, or disregard to resident care, comfort, health and safety. The absence of culpability is not a mitigating circumstance in reducing the amount of the civil money penalty.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

### **411-073-0100 Temporary Management**

*(Effective 10/1/1995)*

(1) When Imposed. The Division may appoint a temporary manager to oversee facility operation:

(a) When there is one or more deficiencies constituting an immediate jeopardy or when there are widespread deficiencies constituting actual harm; or

(b) In any other situation under which a category 3 remedy is required or optional in Exhibit 1.

(2) Required Action.

(a) Manager Authority/Responsibility. A temporary manager shall have authority to hire, terminate or reassign staff; obligate facility funds; alter facility procedures; and manage the facility in a manner to correct deficiencies identified.

(b) Manager Qualifications. A temporary manager shall:

(A) Have experience and education needed to oversee the correction of deficiencies, as determined by the Division;

(B) Not have been found guilty of misconduct by the Board of Examiners of Nursing Home Administrators or any other professional society or licensing board;

(C) Not, nor a member of his/her immediate family, have any financial ownership interest in the facility; and

(D) Not be or have been an employee of the facility within the past two years.

(c) Payment of Salary. The temporary manager's salary:

(A) Is paid directly by the facility while the manager is assigned to the facility;

(B) Must be at least equivalent to the sum of the following:

(i) Prevailing salary paid by facilities for positions of this type in what the Division considers to be the facility's geographic area;

(ii) Additional costs that would have reasonably been incurred by the facility if such a person had been in an employment relationship; and

(iii) Any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the Division; and

(C) May exceed the amount provided for in paragraph (2)(c)(B) of this rule if the Division is otherwise not able to find a qualified temporary manager.

(d) Failure to Relinquish Control or Pay Manager. If the facility fails to relinquish control to a temporary manager or make timely payment of a manager's salary as determined by the Division, the Division shall terminate its Provider Agreement within 23 calendar days from the survey exit date or within seven days of the determination of failure to relinquish control, whichever is earlier. If immediate jeopardy is removed prior to termination of the Provider Agreement, as determined by the Division, the Division may withdraw termination action.

(e) Failure to Correct. If the temporary manager does not correct immediate jeopardy within 23 days of the survey exit date, the Provider Agreement shall be terminated.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

**411-073-0110 Termination of Provider Agreement/Resident Transfer**  
(Effective 10/1/1995)

(1) When Imposed. The Division may terminate the Provider Agreement and/or transfer residents:

(a) When there is immediate jeopardy, when the facility closes, or during an emergency;

(b) When the facility is not in substantial compliance with requirements of participation, regardless of whether or not immediate jeopardy is present;

(c) When the facility fails to submit an acceptable Plan of Correction within the time frame specified by the Division;

(d) When the facility fails to relinquish control to a temporary manager appointed by the Division;

(e) When the facility fails to provide a timely and adequate allegation of compliance required by federal rules governing the survey process;  
or

(f) In any other situation under which a category 1, 2 or 3 remedy is allowed in Exhibit 1.

(2) Required Action.

(a) Transfer. The Division may transfer Medicaid and Medicare residents when required to protect resident health and safety. The Division shall attempt to minimize stress related to such a transfer by involving the resident and, if appropriate, the resident's family and friends to the greatest extent feasible.

(b) Provider Agreement.

(A) The Division shall terminate the Provider Agreement if it determines no feasible alternative to termination exists.

(B) When a Provider Agreement is terminated the Division shall provide for the safe and orderly transfer of residents.

(C) The Division shall terminate the Provider Agreement within 23 days of the survey exit date unless immediate jeopardy is removed, regardless of any other remedies imposed.

(D) If there is no immediate jeopardy, the Division may allow the facility to continue to participate for up to 6 months from the survey exit date if:

(i) The Division concludes it is more appropriate to impose alternative remedies than to terminate the Provider Agreement;

(ii) The facility's Plan of Correction is approved by HCFA;  
and

(iii) The facility agrees to repay the Division (or the federal government, as appropriate) all payments made to the facility following the survey which identified the deficiencies. Such repayment shall be requested by the Division if the Division determines that the facility failed to implement their Plan of Correction.

(E) The Division may deny payment for new Medicaid admissions if the facility is not in substantial compliance three months after the last day of the survey.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

### **Selection of Remedies**

#### **411-073-0120 Notice of Remedy, Excluding Civil Money Penalties** *(Effective 10/1/1995)*

(1) Notice Time Frame. This rule sets forth the notice requirements for remedies other than civil money penalties. The notice requirements for civil money penalties are set forth in OAR 411-073-0140.

(a) No Notice Required. Prior notice is not required when state monitoring is imposed pursuant to OAR 411-073-0070.

(b) Two Day Notice/Immediate Jeopardy.

(A) Provider Agreement. If there is immediate jeopardy, the facility and the public shall receive at least 2 calendar days prior written notice of Termination of Provider Agreement. This remedy shall be effective within 23 days of the survey exit date unless the immediate jeopardy is removed.

(B) Other Remedies. The Division may issue any other remedy(s) provided for under these rules with two calendar days prior written notice if there is immediate jeopardy. The remedy(s) shall be effective no later than 20 days after the mailing of the notice, unless otherwise provided by OAR 411-073-0130.

(c) Fifteen Day Notice. If remedies are proposed but there is no immediate jeopardy, at least 15 calendar days prior written notice shall be provided.

(2) Contents. When the Division issues a notice of remedy(s), the notice shall include:

- (a) The nature of the noncompliance;
- (b) Which remedy(s) is imposed;
- (c) The effective date of the remedy(s); and
- (d) The right to appeal the finding(s) of noncompliance upon which the remedy is based.

(3) Distribution. In addition to the facility, the Division shall notify:

- (a) HCFA, if there is immediate jeopardy;
- (b) The Long Term Care Ombudsman;
- (c) The Board of Examiners of Nursing Home Administrators if the immediate jeopardy involves substandard care;
- (d) Attending physicians if the immediate jeopardy involves substandard care; and
- (e) The Department of Justice.

(4) Facility Response. Within ten work days of receiving a notice of remedy(s), the facility shall provide the following information:

(a) The name of each resident of the facility with respect to which the findings of deficiency were made; and

(b) The name and address of the attending physician for each such resident.

(5) Failure To Disclose Information. If a facility fails to provide information required under section (4) of this rule, the Division may terminate the facility's Provider Agreement or impose other remedies as appropriate.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-073-0130 Notice of Civil Money Penalty/Hearing/Order for Payment**

*(Effective 10/1/1995)*

(1) Contents of Notice. The notice of intent to impose a civil money penalty under these rules shall include:

(a) Nature of the noncompliance;

(b) Statutory basis for the penalty;

(c) Amount of penalty per day of noncompliance;

(d) Any factors specified in OAR 411-073-0090(3)(b) that were considered when the amount of the penalty was determined;

(e) Date upon which the penalty begins to accrue;

(f) Date the penalty stopped accruing or circumstances under which the penalty will stop accruing; and

(g) Instructions for responding to the notice, a statement of the facility's right to a hearing, and the implication of waiving the hearing.

(2) Waiver of Hearing.

(a) The facility may waive, in writing, the right to a hearing within 60 days from the date of the Division's notice of intent to impose the civil money penalty.

(b) If the facility waives the right to a hearing in accordance with subsection (2)(a) of this rule, the amount of the civil money penalty shall be reduced by 35 percent.

### (3) Hearing.

(a) Reduction of Penalty. If the hearings officer finds the basis for imposing a civil money penalty exists, (s)he may not reduce the amount of the civil money penalty below the level required by the scope and severity of noncompliance found pursuant to OAR 411-073-0040, OAR 411-073-0090 and Exhibit 1.

(b) Issues Considered. The only issues the hearings officer may consider in reviewing the amount of the civil money penalty are:

(A) The facility's history of noncompliance, including repeated deficiencies;

(B) The facility's financial condition;

(C) The factors listed in OAR 411-073-0030(2); and

(D) The facility's degree of culpability. The absence of culpability is not a mitigating circumstance in reducing the amount of the civil money penalty.

(c) Standard of Review. The Division's determination as to a facility's level of noncompliance pursuant to OAR 411-073-0030(2) shall be upheld by the hearings officer unless (s)he determines it is clearly erroneous.

### (4) Order Of Payment.

(a) The Division shall issue a "Final Order for Payment of Civil Money Penalty" when

- (A) The facility did not request a hearing; or
- (B) The facility waived the right to a hearing; or
- (C) The civil money penalty was upheld after a hearing; and
- (D) The facility has been determined to be in substantial compliance; or
- (E) The facility has been terminated from participation.

(b) The final order for payment shall include:

- (A) The nature of the noncompliance;
- (B) The statutory basis of the penalty;
- (C) The amount of the penalty per day of noncompliance;
- (D) Any factors specified in OAR 411-073-0090(2)(b) that were considered when determining the amount of the penalty;
- (E) The dates for which the penalty was charged;
- (F) The total amount due;
- (G) The due date the penalty must be paid; and
- (H) The rate of interest assessed on any unpaid balance after the due date.

(c) The Division may deduct the amount of the penalty from any sum then or later owed to the facility by the Division or HCFA.

(d) The civil money penalty is due 15 days after the Final Order for Payment of Civil Money Penalty is mailed.

(5) Interest. The Division shall assess interest on any unpaid balance of the penalty, beginning on the date the penalty is due. The interest rate is the rate established by ORS 82.010.

(6) Use Of Civil Penalty Monies. Civil money penalties collected by the Division pursuant to these rules (OAR Chapter 411, Division 73) shall be applied to the protection of the health and property of residents in facilities found to be deficient by the Division or HCFA. Uses may include but not be limited to:

- (a) Relocation costs;
- (b) Division costs related to temporary management; or
- (c) Reimbursement of resident funds or property lost at the facility as a result of actions by the facility or by employees of the facility.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-073-0140 Dispute Resolution**

*(Effective 10/1/1995)*

(1) Informal Dispute Resolution. Upon receipt of a Statement of Deficiencies, the facility shall be provided an opportunity to dispute the Division's survey findings.

- (a) If a facility wishes an informal conference to dispute the Division's survey findings, the facility shall advise the Division in writing within ten calendar days after receipt of the Statement of Deficiencies.
- (b) The facility may not seek a delay of any enforcement action against it on the grounds the informal dispute resolution has not been completed.
- (c) If a facility is successful in demonstrating the deficiencies should not have been cited, the Division shall reissue the Statement of Deficiencies, removing such deficiencies and rescinding or modifying any remedies issued for such deficiencies. The reissued Statement of Deficiencies shall state that it supersedes the previous Statement of Deficiencies, and shall clearly identify the date of the superseded Statement of Deficiencies.

(2) Formal Hearing.

(a) A facility subjected to a remedy pursuant to OAR Chapter 411, Division 73, excluding OAR 411-073-0070 (state monitoring), shall be entitled to a contested case hearing in accordance with ORS Chapter 183 and OAR Chapter 137.

(b) If a facility wishes a formal hearing, a written request must be received by the Division within 10 calendar days of the informal dispute resolution decision (if applicable) or within 60 days of the notice of remedy or notice of intent to impose a civil money penalty, whichever is later.

(c) The facility may not seek a delay of any enforcement action against it on the grounds the formal hearing has not been completed. If a facility is successful in demonstrating the deficiencies should not have been cited, the Division shall reissue the Statement of Deficiencies, removing such deficiencies and rescinding or modifying any remedies for such deficiencies.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

**411-073-0150 Change of Ownership**

*(Effective 10/1/1995)*

(1) A facility may not avoid a remedy on the basis it underwent a change of ownership.

(2) If a facility has undergone a change of ownership the Division will not restart the count of repeated substandard quality of care surveys unless the new owner can demonstrate to the satisfaction of the Division that the poor past performance is no longer a factor.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

## Exhibit 73-1

<b>MEDICAID REMEDIES MATRIX OAR 411-073-0040(4)</b>				
Severity•	Scope•	Isolated Deficiencies	Pattern of Deficiencies	Widespread Deficiencies
Immediate Jeopardy to Resident Health or Safety		•J POC** and Required: Category 3 Optional: Category 1 Optional: Category 2	•K POC** and Required: Category 3 Optional: Category 1 Optional: Category 2	•L POC** and Required: Category 3 Optional: Category 1 Optional: Category 2
Actual Harm that is not Immediate Jeopardy		•G POC** and Required*: Category 2 Optional: Category 1	•H POC** and Required*: Category 2 Optional: Category 1	•I POC** and Required*: Category 2 Optional: Category 1 Optional: Temporary Mgmt
No Actual Harm with Potential for More than Minimal Harm (Excludes Immediate Jeopardy)		•D POC** and Required: Category 1 Optional: Category 2	•E POC** and Required: Category 1 Optional: Category 2	•F POC** and Required: Category 2 Optional: Category 1
No Actual Harm with Potential for Minimal Harm (Substantial Compliance)		•A No POC** Required	•B POC** Only	•C POC** Only

Shaded areas indicate "Substandard Quality of Care" if deficiencies are in 42 CFR §483.13 (Resident Behavior and Facility Practices), 42 CFR §483.15 (Quality of Life) or 42 CFR §483.25 (Quality of Care). The Division shall notify the Board of Examiners of Nursing Home Administrators and each attending physician.

\* Required when decision is made to impose alternate remedies instead of or in addition to termination.

\*\* "POC" means "Plan of Correction" (see OAR 411-073-0010).

(NOTE: HCFA issues Medicare remedies)

Category 1 Remedies	Category 2 Remedies	Category 3 Remedies
Directed Plan of Correction	Denial of Medicaid Payment for New Admission	Temporary Management
Directed Inservice Training	Denial of All Medicaid Payment	Civil Penalty (\$3,050 - \$10,000/day)
State Monitoring	Civil Penalty (\$50-\$3,000)	Facility Closure
		Resident Transfer
		Immediate Termination