

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

**CHAPTER 411
DIVISION 088**

TRANSFER RULES

411-088-0000 Purpose.

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

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

411-088-0005 Definitions

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

- (1) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the Rules of the Division.
- (2) "Involuntary transfer" means a transfer which is not a voluntary transfer as defined in this rule.
- (3) "Legal representative" means Attorney at Law, person holding a general power of attorney or power of attorney for health care,

guardian, conservator or any person appointed by a court to manage the personal or financial affairs of the resident, or person or agency legally responsible for the welfare or support of the resident, other than the facility.

- (4) "Medical emergency" means a medical condition which, in the exercise of medical judgment, requires immediate health care of a level higher than the facility is capable of delivering.
- (5) "Notice" means a notice as specifically described within OAR Chapter 411, Division 088.
- (6) "Post-hospital extended care services" means a prescribed course of treatment following discharge from a hospital, or following outpatient surgical services or emergency treatment in a hospital.
- (7) "Private pay resident" means a resident who does not receive public assistance under ORS Chapter 411, 412, 413 or 414.
- (8) "Rehabilitative services" means specialized services by a therapist or a therapist assistant to a resident to attain optimal functioning including but not limited to physical therapy, occupational therapy, speech and language therapy and audiology.
- (9) "Right of readmission" means the right to occupy the first vacancy in the facility regardless of any other waiting list following the resident's request for readmission.
- (10) "Right of return" means the right of a person to return to his/her nursing facility bed following transfer to a hospital.
- (11) "Specialized services" means a program of care including hospice, rehabilitative services, respite care, a skilled nursing treatment regime, or be a part of a cooperative effort between the nursing facility and a hospital. The skilled treatment regime must be a regime for which the facility has established a specialty and which is designed to heal or stabilize a medical condition. The cooperative effort between hospital and nursing facility must be for the purposes of assessment and evaluation, monitoring, or for a joint effort in treating a medical condition.

- (12) "Transfer" means termination of an individual as a resident of a facility. The term "transfer" does not include death nor does it include a temporary relocation in which the resident's bed remains available for the resident's immediate return.
- (13) "Voluntary transfer" means a transfer for which the resident has given consent after receipt and understanding of the notice, and after the receipt and understanding of the Division's brochure, "Leaving the Nursing Facility."

411-088-0007 Voluntary Transfer

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

411-088-0010 Involuntary Transfer.

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

411-088-0020 Basis for Involuntary Transfer.

Upon compliance with these Transfer rules (OAR Chapter 411, Division 088), an involuntary transfer of a resident may be made when one of the reasons specified in section (1) or section (2) of this rule exists.

- (1) MEDICAL and WELFARE REASONS.
- (a) A resident may be transferred when the resident's physician states in writing that:

- (A) The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or
 - (B) The facility is unable to meet the resident's care needs and the facility has identified another environment available to the resident which can better meet the resident's needs. The Division shall assist the facility in the effort.
- (b) A resident may be transferred when the Division Administrator or the State Fire Marshal states in writing the safety of the resident (or other persons in the facility) is endangered and justifies the transfer;
 - (c) A resident may be transferred when the behavior of the resident creates a serious and immediate threat to the resident or to other residents or persons in the facility and all reasonable alternatives to transfer (consistent with the attending physician's orders) have been attempted and documented in the resident's medical record. Such alternatives may include but are not limited to chemical or physical restraints and medication;
 - (d) A resident may be transferred when the resident has a medical emergency;
 - (e) A resident may be transferred when governmental action results in the revoking or declining to renew a facility's certification or license;
 - (f) A resident may be transferred when the facility intends to terminate operation as a nursing facility, and:
 - (A) Certifies in writing to the Division the license is to be irrevocably terminated; and
 - (B) Establishes to the satisfaction of the Division it has made arrangements to accomplish all necessary transfers in a safe manner with adequate resident involvement and follow-up for each resident to minimize negative effects of the transfer;

- (g) A resident may be transferred from a facility when the resident has been accepted for the purpose of receiving post-hospital extended care services or specialized services, has physician's orders for such facility services and has, according to the physician's written opinion, improved sufficiently so the resident no longer needs the post-hospital extended care services or specialized services provided by the facility. The purpose of the admission, including the program of care, and the expected length of stay must have been agreed to in writing by the resident (or his/her legal representative who is so authorized to make such an agreement) at or prior to admission. The facility shall identify another environment available to the resident which is appropriate to meet the resident's needs. The Notice may be issued at the time of admission or later and shall be based upon the projected course of treatment.

(2) NON-PAYMENT REASONS.

A resident may be transferred when there is a non-payment of facility charges for the resident and payment for the stay is not available through Medicaid, Medicare or other third party reimbursement. A resident may not be transferred if, prior to actual transfer, delinquent charges are paid. A resident may not be transferred for delinquent charges if payment for current charges is available through Medicaid, Medicare or other third party reimbursement.

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

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

- (1) The availability of alternatives to transfer;
- (2) The resident's ties to family and community;
- (3) The relationships the resident has developed with other residents and facility staff;
- (4) The duration of the resident's stay at the facility;

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

411-088-0040 Involuntary Transfer Prohibited.

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

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

411-088-0050 Right to Return From Hospital.

- (1) If a resident is transferred to a hospital, the facility shall not fill the resident's bed with another person if the resident or the resident's legal representative offers payment, or reimbursement is available from the Division, for the period of the hospital stay. If payment/reimbursement is offered or available, from or on behalf of the resident or the Division or a combination thereof, or if the facility has not complied in full with section (2) of this rule, the resident shall have the right of return to his/her bed immediately after the period of hospital stay.
- (2) The Administrator, or his/her designee, is responsible for notifying the resident/legal representative and any agency responsible for the welfare or support of the resident of the option to offer payment to hold the bed prior to filling the bed with another person. This notification shall be documented in the resident's record by either the resident's or legal representative's written agreement to pay or rejection of the option to pay.
- (3) If the resident is unable due to physical or mental incapacity to enter such agreement and there is no legal representative known to the facility, this fact shall be documented in the resident's record and the resident's bed may thereafter be filled upon issuance of the notice (Exhibit 88-2).
- (4) If the resident's bed has been given to another person because payment was not offered, the resident shall have priority for readmission over all other persons with a right to readmission and over any other waiting list.
- (5) If a former resident or his/her legal representative requests right of return and the facility denies right of return, then the facility shall give written notice (Exhibit 88-2).

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

411-088-0060 Right to Readmission

- (1) Any person transferred from a facility voluntarily or involuntarily shall have the right of readmission to the facility from which the person was transferred, provided that:
 - (a) A request for readmission is made within 180 days of the date of transfer; and
 - (b) The person is eligible by means of payment and requires nursing facility care; and
 - (c) No determination was made at informal conference or hearing that the person would not have the right of readmission.
- (2) Section (1) of this rule does not require a facility to accept a person in a bed located in a room which is occupied by a resident of the opposite sex at the time of the request. Exception: a facility is required to accept a person to a room occupied by a resident of the opposite sex if the respective resident previously shared a room in the facility and if neither resident objects to the admission.
- (3) Section (1) of this rule does not require a facility to accept a person who voluntarily transferred from the facility directly to another nursing facility.
- (4) If a person, or his/her legal representative, requests readmission, and the facility denies readmission, then the facility shall give written notice (Exhibit 88-2).
- (5) A former resident who receives Medicaid does not have the right to be readmitted to a facility which is not Medicaid certified unless

reimbursement is available pursuant to OAR 411-070-0010.

- (6) If more than one person has a right of readmission, priority in allocation of vacancies shall be determined by the earliest date of application for readmission.
- (7) EXCEPTION. A person whose stay(s) in the facility totals 30 or fewer days and was transferred pursuant to OAR 411-088-0070(1)(d) (post-hospital extended care services or specialized services) shall not have a right of readmission.

411-088-0070 Notice Requirements

- (1) NOTICE LENGTH.
 - (a) Any person transferred shall be provided a minimum of 30 days prior written notice (Exhibit 88-1) by the facility unless otherwise provided under this section.
 - (b) Any person may be transferred under OAR 411-088-0020(1)(b) (life or safety threat) or OAR 411-088-0020(1)(c) (behavior problem) with fewer than 30 days prior written notice (Exhibit 88-1) if the reason for such transfer constitutes an emergency; however, the facility shall give as much prior written notice (Exhibit 88-1) as the emergency permits.
 - (c) Any resident may be involuntarily transferred under OAR 411-088-0020 (1)(d) (medical emergency) with no prior notice; however, the facility shall give notice (Exhibit 88-1 or 88-2) before giving the resident's bed to another person.
 - (d) Any person involuntarily transferred under OAR 411-088-0020(1)(g) (post-hospital extended care services or specialized services) and cared for in the facility for less than 30 days may be transferred with fewer than 30 days' Notice.
 - (A) In such cases the person shall be provided with Notice no shorter than the length of current stay in the nursing facility;
 - (B) The Notice shall be issued at the time of admission or as

soon as the length of time for the projected course of treatment can be estimated;

- (C) This subsection (OAR 411-088-0070 (1)(d)) does not apply if the resident had a right of readmission to the same facility prior to the hospital, surgical or emergency department services.
 - (e) Any resident involuntarily transferred under OAR 411-088-0020(1)(b) or (1)(e) (governmental action) shall be provided a minimum of 14 days prior written notice (Exhibit 88-1).
 - (f) Any person denied the right of return or the right of readmission shall be notified by the facility immediately and provided written notice (Exhibit 88-2), mailed (registered or certified) or delivered in person within 5 days from date of request for return or readmission. A denial of right of return or readmission is allowable only if there is good cause to believe the resident lacks such right (see OAR 411-088-0050, 060 and 080(4)(e)).
 - (g) Any resident may voluntarily transfer from the facility; however, the facility shall provide notice (Exhibit 88-1) pursuant this rule and shall maintain the signed consent form in the resident's medical record.
- (2) NOTIFICATION LIST. The facility shall maintain and keep current in the resident's record the name, address, and telephone number of the resident's legal representative, if any, and of any person designated by the resident or his/her legal representative to receive notice of the transfer. The facility shall also record the name, address and telephone number of any person who has demonstrated consistent concern for the resident if the resident has no one who is currently involved and who has been designated by the resident.
- (3) NOTICE DISTRIBUTION. Notice shall be provided to:
- (a) The resident or former resident, as appropriate;
 - (b) All persons required to be listed in the resident's medical record under section (2) of this rule;

- (c) The local unit of the Division or type B area agency on aging. The Notice does not need to be provided to the local unit of the Division or type B area agency on aging if the resident is private pay and the resident's stay(s) in the facility totals 30 or fewer days or less; and
 - (d) The Long-Term Care Ombudsman if there is no one currently involved and designated by the resident.
- (4) NOTICE FORMAT. Each Notice shall be in the same format and shall have the same content as that provided in Exhibit 88-1 (Notice of Transfer) or Exhibit 88-2 (Denial of Readmission/Return) as appropriate.
- (a) Each notice provided to residents, and persons required to be listed in the resident's medical record under section (2) of this rule shall be accompanied by a copy of the Division's brochure, "**Leaving the Nursing Facility.**"
 - (b) If the person is a resident at the facility, the notice shall be served personally to the resident. All other notices required by this rule, including notices to persons who are no longer residents, must be either served personally or delivered by registered or certified mail.
 - (c) Both exhibits are incorporated by this reference as a part of this rule.

411-088-0080 Informal Conference and Hearing.

- (1) CONFERENCE AND HEARING REQUIRED. A person who is to be involuntarily transferred, or refused the right of return or readmission, shall be entitled to an informal conference and hearing as provided in this rule.
- (2) CONFERENCE REQUEST.
 - (a) Upon receipt of a notice, the resident or any agency designated to receive the notice or person acting in the resident's or former

resident's behalf, may request an informal conference on the form provided on the brochure, "**Leaving the Nursing Facility.**"

- (A) The request for informal conference must be mailed to the Division within 10 days of the service or delivery of the notice. The Division shall immediately notify the licensee of the request.
 - (B) The Division may extend the time allowed for requesting an informal conference if it determines that good cause exists for failure to make a timely request.
 - (C) Any facility management personnel, or employe involved in providing nursing or other direct care, who receives any oral or written indication of a desire for an informal conference from a resident shall immediately notify the facility administrator. The administrator shall immediately thereupon provide notification to the Division.
- (b) A resident may not be transferred after having requested an informal conference, or after facility staff or the licensee has knowledge of any indication of a desire for an informal conference, until:
- (A) Disposition of the request has been completed to the satisfaction of all parties; or
 - (B) Authorization is provided by the Hearings Officer pursuant to this section.

(3) INFORMAL CONFERENCE.

- (a) The Division will hold an informal conference as promptly as reasonably possible, but in no event later than 10 days (unless a later date is agreed upon by both the facility and the persons/agencies requesting the conference) after the request is received. The Division shall give telephone notice (where a telephone number is available) and send written notice of the time and place of the conference to the facility and all persons entitled to the notice. The purpose of the informal conference is to

resolve the matter without a formal hearing. If a resolution is reached at the informal conference, it will be reduced to writing and no formal hearing will be held.

- (b) The proceedings will be conducted at the facility where the resident is located unless an alternate site is agreed upon by both the licensee and the persons/agencies requesting the conference.
- (c) At the end of the informal conference, if the licensee wishes to proceed with the transfer, the Division shall ask if any party representing the resident wishes to request a hearing.

(4) HEARING.

- (a) Hearings shall be conducted as a contested case in accordance with the Administrative Procedures Act, ORS Chapter 183, and the rules of the Division adopted thereunder. Parties to the hearing shall be the resident (or former resident) and the licensee. The Hearings Officer is delegated the authority to issue the final order and shall do so.
- (b) If, pursuant to section (3) of this rule, the Division receives (orally or in writing) a request for a hearing, the Division will set the date, time and place of the hearing as promptly as possible. Unless a later date is agreed upon by both the licensee and the person(s) requesting the hearing, the hearing shall be held no later than 30 days after the informal conference.
- (c) Nothing herein shall be construed to prohibit, at the election of the Division and with the consent of all interested parties, a hearing immediately following the informal conference.
- (d) The Division shall provide all persons and entities listed in OAR 411-088-0070(3) and the licensee with notification of the hearing. The hearing notification shall be served on the parties personally or by registered or certified mail.
- (e) At the hearing the facility shall proceed first by presentation of evidence in support of the transfer of the resident, or of refusal to

provide right of return or readmission of the former resident. The person or persons requesting the hearing shall follow the facility by presentation of evidence in support of their objection to the transfer, or of the request of right of return or readmission.

- (A) In a hearing concerning right of readmission, the only questions raised shall be whether the application was timely, whether the former resident is eligible by means of payment, and whether another person was/is entitled to the bed.
 - (B) In a hearing concerning right of return, the only question raised shall be whether full payment is or was available for the period of hospital stay and whether there was authority under OAR 411-088-0050(2) for another person to be given the bed.
- (f) The licensee shall have the burden of establishing that the transfer, or denial of return or readmission, is permitted by law.
- (g) The Hearings Officer shall, in determining the appropriateness and timeliness of an involuntary transfer, or a refusal of return or readmission, consider factors including, but not limited to, the factors listed in OAR 411-088-0030. The Hearings Officer shall not approve a transfer:
- (A) For medical or welfare reasons (under OAR 411-088-0020(1)(a) through (1)(d)) if the risk of physical or emotional trauma significantly outweighs the risk to the resident and/or to other residents if no transfer were to occur.
 - (B) For any other reason if the transfer presents a substantial risk of morbidity or mortality to the resident.
- (h) Conclusion of Hearing. The hearing shall be concluded by the issuance of findings and an order:
- (A) Affirming the transfer, of the refusal to provide right of return or readmission.

- (B) Granting conditional approval of a transfer when necessary or appropriate for the welfare of the resident. Conditions may include without limitation the occurrence of any or all of the following incidents in preparation for a transfer:
 - (i) Selecting a location for the person to be placed consistent with his/her need for care and as consistent as possible with his/her ties, if any, with friends and family;
 - (ii) Soliciting and encouraging participation of the resident's friends and family in preparing the resident for transfer;
 - (iii) Visits by the resident to the proposed site of relocation prior to the actual transfer, accompanied by a person with whom the resident is familiar and comfortable, unless the resident is already familiar with the proposed site;
 - (iv) Arranging at the proposed site of relocation for continuation (as much as possible) of activities and routines with which the resident has become familiar;
 - (v) Ensuring that the resident is afforded continuity in the arrangement of an access to personal items significant to the resident.
- (C) Ordering the licensee to retain the resident or to readmit the former resident if he or she has been transferred; or to provide the former resident with the right of return or readmission; or
- (D) Ordering the licensee to retain the resident and establishing standards of behavior for family members or other visitors necessary for the welfare of residents.
- (E) Making such further provisions as are reasonably necessary to give full force and effect to any order that a licensee retain or readmit the resident or provide the resident the right of

return or readmission.

- (i) If the Division approves a transfer subject to one or more conditions pursuant to this rule, the transfer shall not occur until the licensee has notified the person(s) requesting the hearing and certified to the Division in writing that all of such conditions have been complied with and the Division has acknowledged to the licensee in writing the receipt and sufficiency of such certification. The Division may, upon request, allow verbal certification and give verbal acknowledgement subject to subsequent certification and acknowledgement in writing.
- (5) EXCEPTIONS. A person who is to be involuntarily transferred, or refused the right of return or readmission, as a result of governmental action pursuant to OAR 411-088-0020(1)(b) shall not be entitled to a hearing prior to transfer.

EXHIBIT 88-1

NOTICE OF TRANSFER

This notice is issued by _____

to _____. Copies of this notice have also been issued to the following people (include address and relationship to resident) and agencies:

Date of proposed transfer: _____

Location to which resident is going: _____

This action is taken or proposed to be taken because: Check appropriate box(es)

- | | | |
|---|--|---|
| <input type="checkbox"/> Resident's Request | <input type="checkbox"/> Nonpayment | <input type="checkbox"/> Change in Care Needs |
| <input type="checkbox"/> Medical or Welfare Reasons | <input type="checkbox"/> Completion of Specialized | <input type="checkbox"/> Termination of |
| | or Extended Care Services | Facility Operations |

Other: _____

More specifically, this action is taken/proposed because:

This notice must be accompanied by a copy of the Division's brochure, "Leaving the Nursing Facility." This brochure explains any rights you may have to a hearing.

If you did not receive a copy of the brochure, you should contact the Division (1-800-232-3020) immediately.

Date

Signature and Title of Facility Representative

EXHIBIT 88-2

NOTICE OF DENIAL OF READMISSION/RETURN

This notice is issued by _____

to _____. Copies of this notice have also been issued to the following people (include address and relationship to resident) and agencies:

Date resident transferred from this facility: _____

Location to which transferred: _____

This action is taken or proposed to be taken because: Check appropriate box(es)

Application not Timely Not Eligible by Means of Payment

No Bed Available at Present Time (Will be admitted as soon as bed available)

Other: _____

More specifically, this action is taken/proposed because:

This notice must be accompanied by a copy of the Division's brochure, "Leaving the Nursing Facility." This brochure explains any rights you may have to a hearing.

If you did not receive a copy of the brochure, you should contact the Division (1-800-232-3020) immediately.

Date

Signature and Title of Facility Representative