

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

CHAPTER 411

**DIVISION 85
NURSING FACILITIES GENERALLY**

411-085-0000 Statement of Purpose

(Effective 8/1/2004)

The purpose of these rules (OAR 411, divisions 85-89) is to establish requirements for nursing facilities that promote quality care and maximization of personal choice and independence for residents. Whenever possible, care shall be directed toward returning the resident to his/her own residence or to the least restrictive alternative environment within the shortest time possible.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

411-085-0005 Definitions

(Temporary Effective 3/1/2008)

As used in OAR chapter 411, divisions 70 and 85-89, unless the rule requires otherwise, the following definitions apply:

(1) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would have been able to prevent such as hitting, pinching or striking, or injury resulting from rough handling.

(b) Failure to provide basic care or services to a resident, which results in physical harm or unreasonable discomfort or serious loss of human dignity.

(c) Sexual contact, including fondling, with a resident caused by an employee, agent or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another person, borrowing resident funds, spending resident funds without the resident's consent or if the resident is not capable of consenting, spending resident funds for items or services from which the resident cannot benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal abuse as prohibited by federal law, including the use of oral, written or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment or deprivation directed toward the resident.

(g) Corporal punishment.

(h) Involuntary seclusion for convenience or discipline.

(2) "Abuse Complaint" means any oral or written communication to the Department of Human Services, one of its agents or a law enforcement agency alleging abuse.

(3) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercise and that are designed to maintain or improve physical and mental well-being and social skills.

(4) "Applicant" means the person or persons required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes the sole proprietor, each partner in a

partnership, or the corporation that operates the nursing facility on behalf of the nursing facility business owner.

(5) "Area Agency on Aging" or "AAA" means a Type B Area Agency on Aging that is an established public agency within a planning and service area designated under the Older Americans Act, 42 U.S.C. 3025, that has responsibility for local administration of Seniors and People with Disabilities Division programs.

(6) "Assessment" means a written evaluation of the resident's abilities, condition and needs based upon resident interview, observation, clinical and social records, and other available sources of information.

(7) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and provide reasonable safety, all consistent with the preferences of the resident.

(8) "Certified Medication Assistant" or "Certified Medication Aide" means a certified nursing assistant who has successfully completed an Oregon State Board of Nursing approved training program for the administration of non-injectable medication.

(9) "Certified Nursing Assistant" means a person who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.

(10) "Change of Ownership" and "Change of Operator" means a change in the person or entity that owns the facility business and/or a change in the person or entity responsible for the provision of services at the facility. Events that change ownership include, but are not limited to the following:

- (a) A change in the form of legal organization of the licensee;
- (b) Transfer of the title to the nursing facility enterprise by the owner to another party;
- (c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;

(d) If the licensee is a partnership, any event that dissolves the partnership;

(e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or

(f) Any other event that results in a change of the operating entity.

(11) "Day Care Resident" means a person who receives services and care in a nursing facility for not more than 16 hours per day and who is not bedfast.

(12) "Department" means the Department of Human Services.

(13) "Drug(s)" has the same meaning set forth in ORS chapter 689.

(14) "Entity" means "Person" as defined by these rules.

(15) "Establish a Nursing Facility" or "Maintain a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.

(16) "Facility" or "Nursing Facility" means an establishment that is licensed by the Seniors and People with Disabilities Division as a nursing facility.

(17) "Health Care Facility" means a health care facility as defined in ORS 442.015, but also includes residential care facility as defined in ORS 443.400 and adult foster home as defined in ORS 443.705.

(18) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department of Human Services.

(19) "Incident of Ownership" means:

(a) An ownership interest;

(b) An indirect ownership interest; or

(c) A combination of direct and indirect ownership interest.

(20) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. This term includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(21) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who will or may be cared for and treated on an overnight basis.

(22) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department of Human Services or a "Type B" Area Agency on Aging and includes but is not limited to a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring and complaint investigation.

(23) "Legal Representative" means Attorney at Law, a person holding a general power of attorney or special power of attorney for health care, guardian, conservator, or any person appointed by a court to manage the personal or financial affairs of a resident or person or agency legally responsible for the welfare or support of a resident, other than the facility.

(24) "Licensed Nurse" means a registered nurse (RN) or a licensed practical nurse (LPN).

(25) "Licensed Practical Nurse (LPN)" means a person licensed under ORS chapter 678 to practice practical nursing.

(26) "Licensee" means the applicant to whom a nursing facility license has been issued.

(27) "Local Designee of the Department" means the local unit of the Seniors and People with Disabilities Division or the Type B Area Agency on Aging.

(28) "Long Term Care Facility" means nursing facility.

(29) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(30) "Management" or "Control Interest" means possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of an institution, organization or agency, or an interest as an officer or director of an institution, organization or agency organized as a corporation.

(31) "New Construction" means:

(a) A new building;

(b) An existing building or part of a building that is not currently licensed as a nursing facility;

(c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed (e.g., rooms that are proposed to be licensed as resident rooms, but that are not currently licensed as nursing facility resident rooms);

(d) A major alteration to an existing building, additions, conversions in use; or

(e) Renovation or remodeling of existing buildings.

(32) "NFPA" means National Fire Protection Association.

(33) "Nurse Practitioner" means a person certified under ORS chapter 678 as a nurse practitioner.

(34) "Nursing Assessment" means evaluation of fluids, nutrition, bowel/bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, and analysis or evaluation of that data, and utilization of available resource information.

(35) "Nursing Assistant" or "Nurse Aide" means a person who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes but is not limited to certified nursing assistant, certified medication assistant and persons that have successfully completed a state approved certified nurse assistant training course.

(36) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(37) "Nursing Facility" means an establishment with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures, and that provides care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that cannot be delegated to an unlicensed person. "Nursing facility" shall not be construed to include facilities licensed and operated pursuant to any Oregon Revised Statute (ORS) other than ORS 441.020(2).

(38) "Nursing Facility Law" means ORS chapter 441 and the Oregon Administrative Rules for nursing facilities adopted pursuant thereto.

(39) "Nursing Home" means nursing facility.

(40) "Nursing Home Administrator" means a person licensed under ORS chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing and controlling the operation of a nursing facility.

(41) "Nursing Staff" means registered nurses, licensed practical nurses and nursing assistants providing direct resident care in the facility.

(42) "Owner" means a person with an ownership interest.

(43) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(44) "Person" means an entity, including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock, companies and insurance companies, a state, or a

political subdivision or instrumentality including a municipal corporation, as defined in ORS 442.015.

(45) "Pharmacist" has the same meaning set forth in ORS 689.005.

(46) "Pharmacy" has the same meaning set forth in ORS 689.005.

(47) "Physician" means a person licensed under ORS chapter 677 as a physician.

(48) "Physician's Assistant" means a person registered under ORS chapter 677 as a physician assistant.

(49) "Podiatrist" means a person licensed under ORS chapter 672 to practice podiatry.

(50) "Prescription" has the same meaning set forth in ORS 689.005.

(51) "Public or Private Official" means:

(a) Physician, including any intern or resident;

(b) Licensed practical nurse or registered nurse;

(c) Employee of the Department of Human Services, Area Agency on Aging, county health department, community mental health program, or nursing facility;

(d) Person who contracts to provide services to a nursing facility;

(e) Peace officer;

(f) Clergyman;

(g) Registered social worker;

(h) Physical therapist;

(i) Legal counsel for the resident; or

(j) Guardian or family member for the resident.

(52) "Registered Nurse (RN)" means a person licensed under ORS chapter 678.

(53) "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.

(54) "Relevant Evidence" means factual information that tends to either prove or disprove the following:

(a) Whether abuse or other rule violation occurred;

(b) How abuse or other rule violation occurred; or

(c) Who was involved in the abuse or other rule violation.

(55) "Resident" means a person who has been admitted, but not discharged, from the facility.

(56) "Restorative Aide" means a certified nursing assistant specifically assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities, according to the resident's restorative plan of care and pursuant to OAR 411-086-0150 (Nursing Services: Restorative Care).

(57) "Restorative Services" or "Restorative Nursing" means those measures provided by nursing staff and directed toward re-establishing and maintaining the resident to the resident's fullest potential.

(58) "Safety" means the condition of being protected from environmental hazards without compromise to resident's or legal guardian's choice or undue sacrifice of resident independence.

(59) "Significant Other" means a person designated by the resident or by the court to act in behalf of the resident. If the resident is not capable of such designation, and there is no court-appointed person, then a significant other shall mean a family member or friend who has demonstrated

consistent concern for the resident. No rule using this term is intended to allow release of or access to confidential information to persons who are not otherwise entitled to such information or to allow such persons to make decisions on behalf of a resident that they are not entitled to make.

(60) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(61) "Suspected Abuse" means reasonable cause to believe that abuse may have occurred.

(62) "Trusteeship Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a Trustee for a nursing facility or a residential care facility.

Stat. Auth.: ORS 410.070, 441.055, 441.615 & 441.637

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637 & 441.650

411-085-0010 Issuance of License

(Effective 8/1/2004)

(1) License Required. No person acting individually or jointly with any other person shall establish, conduct, maintain, manage, or operate a nursing facility without a license from The Department.

(2) Not Transferable. Each nursing facility license issued by The Department applies only to person or persons named on the license. The license is not transferable or assignable. The license is valid only for the specific premises designated on the license and for the time period specified on the license.

(3) Certificate of Need. A license will not be issued for a new facility, an expanded facility or a facility offering new services unless the State Office of Health Policy has issued a certificate of need for said facility or service, or has determined that a certificate of need is not required.

(4) Application for Initial Licensure and License Renewal.

(a) The application(s) shall be on a form or forms provided by The Department and shall include all information requested by The Department including, but not limited to, identity and financial interest of any person, including stockholders who have an incident of ownership in the applicant representing an interest of ten percent or more or ten percent of a lease agreement for the facility.

NOTE: Facilities applying for Medicaid and/or Medicare certification are required by federal law to identify applicants representing a five percent or more interest.

(b) If the owner of the nursing facility business is a different entity from the operator of the nursing facility, an application for licensure will be required from both the operator and the owner. Only one license fee is required. Each application must be signed and dated by a legally authorized representative of the entity submitting the application. Name(s) of owner(s)/operator(s) will appear on the license.

(c) The application will require the identification of any person who has ten percent incident of ownership, direct or indirect, in a pharmacy or in any business that provides services or supplies to nursing facilities. If any such person(s) exist(s), the application must identify the person, the name and address of the pharmacy or business.

(d) The application will identify the number of beds the facility is then presently capable of operating considering existing equipment, ancillary service capability and the physical requirements as specified within these rules (OAR 411, divisions 85-89). The number of beds requested to be licensed must not exceed the number identified on the license to be renewed unless prior approval has been issued by The Department or a certificate of need has been issued when required pursuant to ORS Chapter 442.

(e) The application will include a floor plan showing the location of each bed and the dimensions and room number of each room in which a bed is located. The plan will also show the location of dining and activities areas, shower and tub rooms, toilet rooms, clean and dirty utility rooms, therapy services areas, laundry areas and dietary

service areas. After the first filing, plans need only be submitted when changes in the information required in this subsection occur and when requested by The Department.

(f) The application must include a copy of all leases, management and ownership of the facility.

(g) The application must list all states in which the licensee or persons having a ten percent or more incident of ownership in the facility currently or previously is/has been licensed to provide long-term care.

(h) If a renewal is desired, the licensee must make application at least 45 days prior to the expiration date of the existing license.

(i) The license fee must accompany the application.

(j) If the applicant fails to provide complete and accurate information on the application, The Department may deny or revoke the license if it determines the missing or corrected information is needed to determine if a license should be granted.

(k) An application will not be considered to be complete until all requested information and signatures have been provided.

(l) Each application for a new license (excludes license renewal) must include a completed and signed credit and criminal record check authorization form for the applicant(s), and for each person with ten percent incident of ownership in the applicant.

(m) Applicants for license renewal must provide The Department with a completed and signed credit and criminal record check authorization form for the applicant(s), and for each person with incident of ownership in the applicant, when required by The Department.

(n) Applications must state whether or not the applicant(s), and persons with incident of ownership in the applicant, have ever been convicted of a crime associated with operation of a health care facility or agency under federal law or the laws of any state.

(o) Applicants must provide such other information and documentation as The Department may reasonably require for proper administration of these rules, including, but not limited to, information about ownership interest in other business enterprises, if relevant.

(p) The Department will issue the license or issue a denial of licensure within 60 days of receipt of the completed application.

(5) Demonstrated Capability:

(a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of The Department that the applicant is capable of providing care in a manner consistent with the requirements of these rules (OAR 411, divisions 85-89);

(b) The Department may consider the background and qualifications of any person owning ten percent or more interest in the nursing facility operation when determining whether an applicant may be licensed;

(c) The Department may consider the applicant's history of compliance with Division rules and orders, including the history of compliance of each person with a ten percent or more incident of ownership in the applicant;

(d) Any person with a past or present interest of ten percent or more incident of ownership in any nursing facility operation will be considered responsible for acts occurring during and relating to the operation of the nursing facility for the purpose of licensing.

(6) Separate Buildings. Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same ownership or management.

Stat. Auth.: ORS 410.070 & 441.055

Stat. Implemented: ORS 441.015, 411.055, 441.615 & 412.315

411-085-0013 New Applicant Qualifications

(Effective 8/1/2004)

For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds ten percent or greater incident of ownership in the facility. Applicants for licensure (excluding license renewal, but including all changes of ownership) must meet the following criteria:

(1) CRIMINAL HISTORY. Each applicant must complete a Criminal History Clearance conducted by The Department in accordance with OAR chapter 407, division 007. The Department conducts the fitness determination. If determined "unfit," applicants may appeal as described in OAR 407-007-0330.

(2) PERFORMANCE HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill or disabled persons and was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years;

(b) Be free of incident of ownership history in any nursing facility in any state that was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years;

(c) Be free of history of termination of licensure as a nursing facility administrator or health care provider during the past five years;

(d) Failure to demonstrate required performance history may result in The Department's denial of a license.

(3) FINANCIAL HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years;

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation,

food supplies, or other costs necessary for facility operation, during the past five years;

(c) Have a record of good credit as evidenced by a Division credit check;

(d) Submit proof of fiscal responsibility, including an auditor's certified financial statement and other verifiable documentary evidence of fiscal solvency, documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not be considered to be "liquid assets," but may be considered to be "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A joint escrow account with SPD;

(C) A performance bond; or

(D) Any other method satisfactory to SPD.

(e) Provide a pro forma (revenues, expenditures and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) **EXPERIENCE.** If an applicant does not have experience in the provision of nursing facility care, the applicant must employ the services of a consultant with experience in the provision of nursing facility care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of The Department. Costs incurred for such consulting services are not an allowable cost for Medicaid reimbursement.

(5) **DEMONSTRATION OF RIGHT TO PROPERTY/BUSINESS.** The applicant must demonstrate that they have the legal right to possess the nursing facility property and operate the nursing facility business.

EXAMPLE: If purchasing the property, the applicant must include documentation demonstrating clear title and current right to possess the property. If leasing the facility property, or planning to operate it under a management agreement, the applicant must provide all legal documents needed to demonstrate the right to possess the property and operate the business.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.025, 441.055 & 441.615

411-085-0015 License Expiration, Termination of Operation, License Return

(Effective 8/1/2004)

(1) EXPIRATION. Unless revoked or terminated earlier, or issued for a shorter specified period, each license to operate a nursing facility expires on December 31 following the date of issue.

(2) TERMINATION OF OPERATION. Except as otherwise provided in this rule, if facility operation is discontinued for any reason, the license is expired. The licensee has appeal rights under ORS Chapter 183.

(3) INACTIVE LICENSE. When the licensee proposes to replace an existing (original) licensed nursing facility with a new building, The Department may grant the licensee an inactive license for up to 24 months after closure of the original facility (departure of the last resident) under the following conditions:

(a) The existing facility must not meet the physical environment requirements for new construction (division 87 of OAR 411);

(b) The licensee must comply with the Health Division's Certificate of Need process, including the physical environment requirements for new construction;

(c) The licensee must submit to The Department a written request for an extension to continue the license, and must submit an application for license renewal and the license fee prior to the beginning of each calendar year;

(d) The licensee must comply with plan review (OAR 411-087-0010(3)) and all other applicable requirements; and

(e) The licensee's written request must include information that assures The Department that the new facility will provide an improved quality of care that is needed in the community and that is determined by The Department to be in the public's interest.

(f) The licensee must provide written notice of intent to apply for an inactive license at least 30 days prior to closure of the original building. This notice must be provided to The Department and every licensed nursing facility, assisted living facility and residential care facility within 20 miles of the proposed new building site.

(g) The licensee must provide a minimum of two written progress reports to The Department regarding the status of the new building.

(A) The first report must be received by The Department between six months and nine months after the original facility is closed.

(B) The second report must be received by The Department between 18 months and 21 months after the original facility is closed.

(4) EXTENSION. If the licensee fails to open the new building within 24 months of the closure of the original facility, The Department may extend the inactive license for an additional 18 months. The licensee must submit written request to The Department for an extension prior to expiration of the inactive license. The following must be included in the request for extension:

(a) Notice to Nearby Facilities. A statement certifying that the licensee has made reasonable attempt to provide written notice to each nursing, assisted living and residential care facility within 20 miles of the site of the proposed facility of the intent to request an extension. Upon request, The Department will provide a list of the names and addresses of all nursing, assisted living and residential care facilities in the state.

(b) Site Plan. A completed site plan that has been submitted to the local jurisdiction (city or county planning agency).

(c) Architectural Drawings. Working architectural drawings that have been stamped or prepared by a licensed architect.

(d) Building Site. Evidence that the land proposed for the new building is under control of the licensee.

(e) Local Jurisdiction Communication. Evidence of continued contact with the local jurisdiction.

(f) Financial Commitment. Evidence of financial commitments towards completion of the project, including proof of lender commitments and cash on hand sufficient to complete the construction.

(g) Construction Contracts. Construction contracts or other evidence showing that the project will be completed prior to the expiration of the extended inactive license.

(5) RETURN OF LICENSE. Each license certificate must be returned to The Department immediately upon issuance of a final order revoking or suspending the license. If a license is terminated voluntarily or involuntarily because operation has been discontinued, the license certificate must be immediately returned to The Department.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.025, 441.055 & 441.615

411-085-0020 License Fees, Special Assessment

(Effective 8/1/2004)

(1) LICENSE APPLICATION FEES. License application fees may not be prorated for a partial year. The annual fee is:

(a) For 1-15 beds: \$120

(b) For 16-49 beds: \$ 175

(c) For 100-199 beds: \$ 450

(d) For 200 or more beds: \$ 580

(2) SPECIAL TRUST FUND ASSESSMENT:

(a) Whenever The Department determines that the balance in the Trusteeship Fund created by Oregon statute is less than the amount established by the statute, a special assessment is levied against all licensees. The special assessment will be pro-rated (based upon the annual fee of the licensee) in order to result in collection of an amount that will result in a Trust Fund balance of no more than the amount set by the statute. In no event may the special assessment be greater than the annual license fee. The special assessment may be levied only once each calendar year;

(b) Monies are disbursed from the fund in accordance with ORS 441.277-441.323.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.020, 441.055, 441.303 & 441.615

411-085-0025 Change of Ownership or Operator/Cessation of Business

(Effective 8/1/2004)

(1) PENDING CHANGE OF OWNERSHIP/MANAGEMENT. When a change of ownership or a change of operator is contemplated, the licensee and the prospective licensee must each notify The Department in writing of the contemplated change. The change of ownership/operator must be received by The Department at least 45 days prior to the proposed date of transfer. A shorter timeframe may be allowed at the sole discretion of The Department. The notification must be in writing and must include the following:

(a) Name and signature of the current licensee;

- (b) The name of the prospective licensee;
- (c) The proposed date of the transfer;
- (d) Type of transfer (e.g., sale, lease, rental, etc.).
- (e) A complete, signed nursing facility application from the prospective licensee.

(2) **EFFECTIVE DATE OF CHANGE.** The prospective licensee will not assume possession or control of the facility until after the prospective licensee has been notified by The Department that its license application has been approved.

(3) **LICENSEE RESPONSIBLE.** The licensee(s) is/are responsible for operation of the facility and resident care provided therein until a new license is issued to a new owner or manager or the facility operation is closed.

(4) Before a licensee ceases operation of and closes a facility, the licensee must notify The Department of the impending closure in writing at least 90 days prior to the proposed date of closure. The licensee is responsible for operation of the facility and for the resident care provided therein until all residents are transferred and the facility is closed.

EXCEPTION: When the closure date is established by The Department.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615

411-085-0030 Required Postings
(Effective 8/1/2004)

(1) **PUBLIC NOTICES:**

- (a) Content. Public notices required to be posted include:

(A) The most recent licensing and, if applicable, certification survey report(s);

(B) The placard provided by The Department that includes information on reporting of abuse and summarizes the nursing facility rules. In addition to the location specified in subsection (1)(b) of this rule, this placard must also be prominently and conspicuously posted in close proximity to each nursing station and in the area(s) where residents are admitted;

(C) The current week's menu and activities schedule;

(D) The facility license and the administrator's license. (It is recommended the titles and names of the administrator, the DNS, the Social Services Director, the Activities Director, the Dietary Services Supervisor and the RN Care Manager(s) are also posted);

(E) Waivers received from The Department pursuant to OAR 411-085-0040 and 411-087-0030, and waivers of any federal regulations; and

(F) Any other notice relevant to residents or visitors required by state or federal law.

(b) Location. The facility will designate a specific area where notices listed in subsection (1)(a) of this rule will be posted and that:

(A) Is routinely accessible and conspicuous to residents and visitors, including those in wheelchairs; and

(B) Provides sufficient space for prominent, conspicuous display of each notice.

(2) NOTICES FOR STAFF. The facility must post the names of registered nurses as required by OAR 411-086-0020 and the physician(s) available for emergencies as required by OAR 411-086-0200 at each nursing station.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.067 & 441.615

411-085-0040 Alternative Methods, Waivers

(Effective 8/1/2004)

(1) APPLICATION. While all nursing facilities are required to maintain compliance with The Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications, or the conducting of pilot projects or research. Requests for waivers to the rules must:

- (a) Be submitted to The Department in writing;
- (b) Identify the specific rule for which a waiver is requested;
- (c) Describe the special circumstances relied upon to justify the waiver;
- (d) Describe what alternatives were considered, if any, and why alternatives (including compliance) were not selected;
- (e) Demonstrate that the proposed waiver is desirable to maintain or improve the quality of care for the residents, will maintain or improve resident potential for self-direction and self-care, and will not jeopardize resident health and safety; and
- (f) Identify the proposed duration of the waiver.

(2) APPROVAL PERIOD. Upon finding that the licensee has satisfied the conditions of this rule, The Department may grant a waiver for a specified period of time, not to exceed a period of three years.

(3) REVOCATION. The Department may revoke any waiver or variance issued by The Department immediately upon finding that the facility's operation under the waiver or variance has endangered, or if continued would endanger, the health or safety of one or more residents.

(4) IMPLEMENTATION. The facility may implement a waiver only after written approval from The Department.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615

411-085-0050 Hospital-Based Nursing Facilities
(Effective 8/1/2004)

Facilities that are physically connected to and operated by a licensed general hospital will be considered to be in compliance with the following Oregon nursing facility requirements:

(1) Requirements for policies, procedures and quality assurance programs if such policies, procedures and programs exist for both hospital and nursing facility.

(2) Requirements for full-time staff positions, departments and committees if the hospital has similar positions/departments/committees that address needs in the nursing facility.

(3) Requirements for a drug room or pharmacy if the hospital has a pharmacy or drug room available to the nursing facility 24 hours per day.

(4) Rules requiring specific training for the DNS and the RN Care Manager until January 1, 1990.

(5) Requirements that the administrator be full-time in the nursing facility if the nursing facility has 40 or fewer licensed beds. The administrator, however, must work full-time, based on time spent on both the hospital and nursing facility responsibilities, and must be available to nursing facility staff on a full-time basis.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615

411-085-0060 Specialty Nursing Facilities
(Effective 8/1/2004)

(1) APPLICATION. Facilities that have successfully obtained from the State Office of Health Policy a certificate of need for "specialty long-term care beds" pursuant to OAR 333-610 must make application to The Department for licensure as "Special Nursing Facility" in accordance with OAR 411-085-0010.

(2) ISSUANCE OF LICENSE. Licenses will only be issued to a Specialty Nursing Facility after written notification from the State Office of Health Policy that the facility is eligible for such licensure. The license issued will state "Specialty Nursing Facility" and will identify the type of residents and specialized services the facility is authorized to admit and retain.

(3) COMPLIANCE WITH RULES. Specialty Nursing Facilities will be required to meet all Oregon Administrative Rules that apply to Nursing Facilities.

(4) ADMISSIONS. Facilities and distinct parts of facilities licensed as Specialty Nursing Facilities must only admit and provide services for residents consistent with the Certificate of Need issued by the Office of Health Policy.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

411-085-0200 Licensee, Employees, Consultants

(Effective 3/6/2008)

(1) LICENSEE. The licensee will be responsible for the operation of the facility and the quality of care rendered in the facility.

(2) EMPLOYEES.

(a) Licensure, Registration, Certification Required. All health care personnel working in the facility must be licensed, registered, or certified as required. Documentation thereof is required for all such employees.

(b) Reference Check. The licensee must check and document references for all prospective employees prior to employment.

(c) Job Description. All employees' duties must be defined in writing and maintained in the facility. All employees must be instructed in and perform the duties assigned.

(d) Nursing Personnel. Before employing a registered nurse, licensed practical nurse or nursing assistant, the licensee must contact the Oregon State Board of Nursing and inquire whether the person is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the person or any substantiated abuse findings against a nursing assistant.

(e) The licensee must assure a criminal history check is completed on all employees, in accordance with OAR chapter 407, division 007, (Criminal History Checks). A licensee must not employ any individual who is determined to be ineligible to provide services as outlined in OAR chapter 407, division 007.

(3) PROHIBITION OF EMPLOYMENT. The facility must not employ or retain in employment any of the following:

(a) Any person found responsible for abusing, neglecting or mistreating a person receiving long-term care services in a final administrative action that is not under appeal or in a court of law;

(b) Any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150; or

(c) Any person who is known or reasonably should be known to the facility to be abusive or to have been abusive.

(4) CONSULTANTS. When consultants are required, a facility will require consultants to file written reports at least quarterly. These reports must include date(s) of visit(s), length of time spent on premises, action taken on previous reports, problems identified, recommendations, staff members contacted, services performed, distribution of reports, and date mailed or delivered. The facility must maintain these quarterly reports in the facility.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.637 & 441.679

411-085-0210 Facility Policies

(Effective 8/1/2004)

(1) POLICIES REQUIRED. A Quality Assessment and Assurance Committee must develop and adopt facility policies. The policies must be followed by the facility staff and evaluated annually by the Quality Assessment and Assurance Committee and rewritten as needed. Policies must be adopted regarding:

- (a) Admission, fees and services;
- (b) Transfer and discharge, including discharge planning;
- (c) Physician services;
- (d) Nursing services;
- (e) Dietary services;
- (f) Rehabilitative services and restorative services;
- (g) Pharmaceutical services, including self administration;
- (h) Care of residents in an emergency;
- (i) Activities;
- (j) Social services;
- (k) Clinical records;
- (l) Infection control;
- (m) Diagnostic services;
- (n) Oral care and dental services;

- (o) Accident prevention and reporting of incidents;
- (p) Housekeeping services and preventive maintenance;
- (q) Employee orientation and inservice;
- (r) Laundry services;
- (s) Possession of firearms and ammunition;
- (t) Consultant services; and
- (u) Resident grievances.

(2) DOCUMENTATION. Each policy must be in writing and must specify the last date at which such policy was reviewed by the Quality Assessment and Assurance Committee.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

411-085-0220 Quality Assurance

(Effective 8/1/2004)

(1) QUALITY ASSESSMENT AND ASSURANCE COMMITTEE. Each facility must have a Quality Assessment and Assurance Committee. The committee must include the administrator, medical director, Director of Nursing Services (DNS), consulting pharmacist and at least one other facility staff person. The committee must:

- (a) Ensure a quality assurance program is conducted as required in this rule;
- (b) Adopt facility policies as identified in OAR 411-085-0210;
- (c) Ensure a pharmaceutical services review is completed as required by OAR 411-086-0260(2);

(d) Ensure that an infection control program as identified in OAR 411-086-0330 is conducted; and

(e) Meet no less often than quarterly.

(2) **QUALITY ASSURANCE.** The Quality Assessment and Assurance Committee must conduct an annual review of care practices to ensure quality. The review must include:

(a) Evaluation of resident audits (biannual physical examination of a representative sample of facility residents). The sample must include a minimum of 20 percent of the residents or ten residents, whichever is greater;

(b) Clinical records, including medication administration and treatments;

(c) Resident nutritional status, including weights, intake, and output;

(d) Care plans to ensure that care needs have been identified and addressed;

(e) The services and functions required by the policies listed in OAR 411-085-0210; and

(f) Actions taken to resolve identified problems and to prevent their recurrence.

(3) **DOCUMENTATION.** All meetings of the Quality Assessment and Assurance Committee must be documented. Documentation must include a listing of those in attendance, length of the meeting, issues discussed, findings, actions, recommendations made and assessment of previous actions and recommendations.

Stat. Auth.: ORS 410.070 & 441.055

Stat. Implemented: ORS 441.055 & 441.615

411-085-0300 Civil Rights

(Effective 8/1/2004)

(1) The facility must not make any distinction, discrimination or restriction based on a resident's, potential resident's or visitor's sex, marital status, race, color, national origin or disability.

(2) The facility must make reasonable accommodations in order to provide services needed by applicants who are disabled.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

411-085-0310 Residents' Rights: Generally

(Effective 3/6/2008)

The facility must protect, encourage and assist the resident in exercising the rights identified in OAR 411-085-0300 – OAR 411-085-0350. Each resident and the resident's legal representative, as appropriate, have the right to:

(1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.

(2) Be fully informed, orally and in writing in a language the resident understands of these rights, and of all facility guidelines for resident conduct and responsibilities. This must be documented by the resident's written acknowledgment, prior to or at the time of admission.

(3) Be fully informed, prior to or at the time of admission and during stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring that the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.

(4) Be fully informed of his/her total health status, including but not limited to medical status. The resident must be informed of the right to choose his/her own physician and to be fully informed in advance of any changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his/her own decisions and fully participate in

care and care planning unless the resident has been found legally incapable of doing so.

(5) Refuse any medication, treatment, care or any participation in experimental research unless the resident has been found legally incapable of doing so.

(6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.

(7) Be free from verbal, sexual, mental and physical abuse, corporal punishment and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.

(8) Be transferred or discharged only in accordance with the Seniors and People with Disabilities Division transfer and discharge rules in OAR chapter 411, division 088.

(9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects.

(a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days.

(b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment would have a significant adverse impact on the resident's medical or psychological status.

(c) Moving residents on the basis of source of payment is not just cause for intrafacility transfers.

(d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.

(10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act promptly upon grievances and recommendations received from residents and family groups.

(11) Be treated with consideration, respect and dignity and assured complete privacy during treatment and when receiving personal care.

(12) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened and to have regular access to the private use of a telephone.

(13) Be provided privacy for visits when requested, including meetings with other residents and family groups.

(14) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, the Seniors and People with Disabilities Division, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.

(15) Promptly inspect all records pertaining to the resident.

(16) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no case require more than two business days (days excluding Saturdays, Sundays and state holidays).

(17) Participate in social, religious, and community activities at the discretion of the resident.

(18) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.

(19) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, neither the facility nor any person subject to the supervision, direction, or control of the facility may retaliate by:

- (a) Increasing charges or decreasing services, rights or privileges;
- (b) Threatening to increase charges or decrease services, rights or privileges;
- (c) Taking or threatening any action to coerce or compel the resident to leave the facility; or
- (d) Abusing, harassing, or threatening to abuse or harass a resident.

(20) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.

(21) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.

(22) Receive care from facility staff trained to provide care that is specific to the resident's disease or medical condition.

(23) Receive a modified or special diet that meets the specific requirements of the resident's disease or medical condition.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.600, 441.610, 441.615 & 441.700

411-085-0320 Residents' Rights: Charges and Rates

(Effective 8/1/2004)

(1) **ADMISSION.** The facility must provide written and oral notice before or at the time of admission to each resident specifying:

- (a) The base daily rate, or Medicaid rate and, as soon as known, amount of resident liability, as applicable; services provided for that

rate, and other charges that might reasonably be expected, including but not limited to medical supplies, pharmaceuticals, incontinence care, feeding, bedhold daily rate, and laundry;

(b) Whether the facility accepts Medicaid reimbursement:

(A) If the facility accepts Medicaid reimbursement, the notice must include a description of the Medicaid eligibility requirements and who to contact to apply for Medicaid assistance;

(B) If the facility does not accept Medicaid, the notice must include the facility's policy regarding residents who exhaust their private resources and become eligible for Medicaid;

(C) Nothing in this section will be construed to permit discrimination based on payment source; and

(c) Alternative forms of transportation available to the resident for routine and emergency transportation, including information on possible cost and how to access such service(s).

(2) RATE CHANGES. The facility must give 30 days' written notice to all residents of changes in base rates and any other charge.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.605 & 441.615

411-085-0330 Residents' Rights: Visitor Access

(Effective 8/1/2004)

(1) DEFINITION. As used in this rule, "full and free access" means access to the fullest extent possible without undue adverse interference on the operation of the facility.

(2) FULL ACCESS. The facility must permit individuals and groups full and free access to:

(a) Visit, talk with and make personal, social and legal services available to all residents;

(b) Inform residents of their rights and entitlements, and their corresponding obligations, under federal and state laws by means of distribution of educational materials and discussion in groups and with individual residents;

(c) Assist, advise and represent residents in obtaining public assistance, medical assistance, social security benefits and in asserting resident rights. Assistance may be provided to residents individually or in groups.

(3) RIGHT TO REFUSE. The resident has the right to refuse contact with any individual or group who otherwise has access to the facility under this rule. The refusal to communicate with any individual or group must be made directly by the resident unless the resident's medical record clearly documents the reasons for not doing so.

(4) SOLICITATION. This rule is not intended to allow access to persons or organizations whose primary purpose is to solicit purchase of services or products, or solicit contributions, from the residents or staff.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.605 & 441.615

411-085-0340 Residents' Rights: Pharmaceutical Services, Charges for Drugs

(Effective 8/1/2004)

(1) CHOICE OF SUPPLIERS:

(a) The resident must have a choice from among prescription/nonprescription drug delivery systems so long as the system selected:

(A) Provides for timely delivery of drugs;

(B) Provides adequate protection to prevent tampering with drugs;

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy.

(b) The resident must have a choice from among suppliers of nonprescription medication, but no facility is required to accept any opened container of such medication;

(c) If the established system of the facility, whether provided by facility pharmacy or a pharmacy under contract, provides resident profile information (diagnosis, medications and allergies), the pharmacy chosen by the resident under subsection (1)(a) of this rule must also provide that information for any resident it serves at the facility;

(d) The resident must have a choice from among suppliers of nonprescriptive sickroom supplies so long as any items supplied can be maintained in a clean manner with equipment available at the facility;

(e) For purposes of subsections (1)(b) and (c) of this rule, "supplier" includes an authorized representative of the resident who purchases nonprescriptive medication or nonprescriptive sickroom supplies at retail.

(2) CHARGES FOR DRUGS:

(a) If a facility charges residents for drugs, the following must be made available to the resident on request:

(A) Name of the drug;

(B) Amount paid by the facility for the drug;

(C) Amount charged by the facility for the drug; and

(D) Amount of repackaging costs, if any.

(b) If a pharmacy charges any resident's insurance company or other party for a drug administered to a resident in a nursing facility, the pharmacy must provide on request a written bill listing the:

(A) Name of the drug; and

(B) Amount charged by the pharmacy for the drug.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.083, 441.084 & 441.615

411-085-0350 Residents' Rights: Personal Funds

(Effective 8/1/2004)

(1) RESIDENT HELD FUNDS. The resident has the right to manage his/her financial affairs and the facility may not require residents to deposit personal funds with the facility.

(2) FACILITY HELD FUNDS.

(a) Resident Request. The facility must hold, safeguard, manage and account for the personal funds of the resident when requested in writing. The resident must be fully informed of the facility's system for protecting personal funds. When the resident requests that the facility hold such funds, the facility must ensure that such request is in writing;

(b) Accounting System. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility. The system may allow resident funds to be pooled together, however it must preclude any commingling of resident funds with facility funds;

(c) Report to Resident. The facility must provide a copy of the individual financial record to the resident no less often than quarterly and upon request of the resident. The statement must include the following information:

(A) Identification number and location of the account in which the resident's personal funds have been deposited.

(B) The resident's account balance at the beginning of the statement period.

(C) A listing of each deposit, and each withdrawal, to and from the resident's account. Each withdrawal must include an explanation of the reason for the withdrawal (Example: If money is requested by the resident, facility may document "resident request").

(D) The interest earned, if any, and the current interest rate.

(E) The ending balance.

(d) Resident Control of Funds. The facility must take all reasonable precautions to ensure the resident's funds are handled according to the resident's wishes. If resident's wishes cannot be determined, funds must be handled in accordance with the best interest of the resident;

(e) Resident Access to Funds. The facility must allow residents access to funds on weekdays (Monday through Friday, excluding holidays) during business office hours (no less than six hours per day) and at least two hours per day on all other days;

(f) Funds Under \$50. The facility may hold up to \$50 for each resident in a non-interest-bearing, petty cash fund. All resident funds held by the facility that are not in the petty cash fund must be deposited in an interest-bearing account as described in subsection (g) of this rule,

(g) Funds \$50 and over.

(A) Whenever money held by the facility for a resident exceeds \$50, the excess above \$50 must, within 7 days of receipt, be deposited in the resident's interest-bearing account, unless the money is managed in a Trust and Agency Account held by The Department.

(B) If the interest-bearing account for residents is pooled, the facility must have a system that accurately and promptly allocates earned interest to the appropriate resident.

(h) SSI Resource Limit Exceeded. The facility must notify any resident receiving Medicaid benefits whenever his/her account reaches within \$200 of the SSI resource limit for one person; and that, if the amount in the account and the value of the resident's non-exempt resources reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI;

(i) Death of Resident. Upon the death of a Medicaid or General Assistance resident with no known surviving spouse, any personal incidental funds held by the facility for the resident must be forwarded to the Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem, OR 97309, within ten (10) business days of the death of the resident. The facility must maintain documentation of the action taken and the amount of funds conveyed;

(j) Surety Bond. The licensee must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility. The amount of the bond must be sufficient to cover the highest amount of the account with resident funds, plus the petty cash funds, during the previous 12 months.

(3) CHANGE OF OWNERSHIP OR LICENSEE. At the time of a change of ownership or licensee, the new owner or licensee must ensure:

(a) Written Accounting of Funds. Each resident or delegate receives a written accounting of his/her funds held by the facility at the time of the change. A copy of the written accounting for each resident must be provided to the local SPD or Type B AAA.

(b) Resident Wishes Respected. That the wishes of each resident regarding management of facility held funds is determined and documented (see OAR 411-070-0095 for Medicaid clients), and that funds held by the prior owner or licensee are transferred to the new owner or licensee or to another party, designated by the resident.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

411-085-0360 Abuse

(Effective 8/1/2004)

(1) ABUSE IS PROHIBITED. The facility employees, agents and licensee must not permit, aid, or engage in abuse of residents under their care.

(2) REPORTERS AND MANDATORY REPORTERS. All persons are encouraged to report abuse and suspected abuse. The following persons are required to immediately report abuse and suspected abuse to The Department or law enforcement agency;

(a) Physicians, including any resident physician or intern;

(b) Licensed practical nurse or registered nurse;

(c) Employee of the Oregon Department of Human Services, Area Agency on Aging, county health department or community mental health program;

(d) Nursing facility employee or any individual who contracts to provide services in a nursing facility;

(e) Peace officer;

(f) Clergy;

(g) Licensed social worker;

(h) Physical, speech or occupational therapist; and

(i) Family member of a resident or guardian or legal counsel for a resident.

(3) FACILITY REPORTING OF ABUSE OR SUSPECTED ABUSE.

(a) The nursing facility administration must immediately notify The Department, local designee of The Department, or local law enforcement agency of any incident of abuse or suspected abuse. Physical injury of an unknown cause must be reported to The Department as suspected abuse, unless an immediate facility investigation reasonably concludes the physical injury is not the result of abuse.

(b) The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (for example; rape; murder, assault, burglary, kidnapping, theft of controlled substances).

(c) The local law enforcement agency must be called if the offices of The Department or designee are closed and there are no arrangements for after hours investigation.

(4) ABUSE COMPLAINT. The oral or written abuse complaint must include the following information when available;

(a) Names, addresses and phone numbers of alleged perpetrator(s), resident(s) and witness(es);

(b) The nature and extent of the abuse or suspected abuse (including any evidence of previous abuse);

(c) Any explanation given for the abuse or suspected abuse; and

(d) Any other information that the person making the report believes might be helpful in establishing the circumstances surrounding the abuse and the identity of the perpetrator.

(5) PRIVILEGE. In the case of abuse of a resident, the physician-patient privilege, the husband-wife privilege, and the privileges extended under ORS 40.225 to 40.295 will not be a ground for excluding evidence

regarding the abuse, or the cause thereof, in any judicial proceeding resulting from an abuse complaint made pursuant to this section.

(6) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The facility licensee, employees and agents must not retaliate in any way against anyone who participates in the making of an abuse complaint, including but not limited to restricting otherwise lawful access to the facility or to any resident, or, if an employee, to dismissal or harassment;

(b) The facility licensee, employee and agents must not retaliate against any resident who is alleged to be a victim of abuse.

(c) Anyone who, in good faith, reports abuse or suspected abuse will have immunity from any liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint. Any such person will have the same immunity with respect to participating in judicial or administrative proceedings relating to the complaint.

(7) INVESTIGATION BY FACILITY. In addition to immediately reporting abuse or suspected abuse to The Department or law enforcement agency, the facility must promptly investigate all reports of abuse and suspected abuse and must take measures necessary to protect residents from abuse and prevent recurrence of abuse.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.615, 441.630, 441.637, 441.640, 441.645 & 441.655

411-085-0370 Confidentiality

(Effective 8/1/2004)

This rule applies to facility licensees, employees and agents, to Division staff and the staff of all Area Agencies on Aging.

(1) RESIDENTS. The names of residents and all documentation that would allow the identification of a resident must be kept confidential and are not accessible for public inspection.

(2) COMPLAINANTS, WITNESSES. The names and identity of complainants and witnesses referred to in Division complaint investigations must be kept confidential and are not accessible for public inspection.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.637 & 441.671