

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION
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| Department of Human Services, Aging and People with Disabilities (APD) | 411-054 |
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FILING CAPTION

Requires residential care facilities provide consumer summary; extends launch of metrics tracking (SB 815, 2019)

Agency Approved Date: [12/20/2019]

Effective Date: [01/01/2020] through [06/28/2020]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

ADOPT:

AMEND: 411-054-0025; 411-054-0320

SUSPEND:

RULE SUMMARY:

Include a summary for each rule included in this filing.

411-054-0025: Adds requirement for facilities to provide new Consumer Summary Statement to residents at admission

411-054-0320: Extends initial deadline for the Quality Metrics Program to begin from 2020 to 2021.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

The Department needs to immediately amend rule to be in compliance with SB 815 (2019).

Justification of Temporary Filing:

Failure to act promptly and immediately amend OAR chapter 411, division 054 will result in serious prejudice to the public interest, the Department, and

residents of residential care and assisted living facilities. These rules need to be adopted promptly so that residential care and assisted living facilities will be in compliance with new requirements for providing this consumer summary statement. In addition, residential care and assisted living facilities need to be aware of the new deadline for the initial launch of the Quality Metrics program.

OAR chapter 411, division 054 needs to be amended promptly so, at admission, residents will be provided with a summary of services that facilities do and do not provide, as well as an explanation that residents will be asked to leave the facility, should facility leadership determine the facility can no longer provide services the resident needs. Also, the Quality Metrics program will require residential care and assisted living facilities to track and report data; facilities need to be aware that the program is beginning in 2020, since facilities will need to immediately begin tracking data. (Implements SB 815)

Documents Relied Upon, and where they are available:

<https://olis.oregonlegislature.gov/liz/2019R1/Measures/Overview/SB815>.

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2019orlaw0554.pdf

Signature

Date

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

**CHAPTER 411
DIVISION 54**

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0025 Facility Administration

(Temporary effective 01/01/2020 to 06/28/2020)

(1) FACILITY OPERATION.

(a) The licensee is responsible for the operation of the facility and the quality of services rendered in the facility.

(b) The licensee is responsible for the supervision, training, and overall conduct of staff when staff are acting within the scope of his or her employment duties.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(d) The licensee is responsible for obtaining background checks on all subject individuals.

(2) BACKGROUND CHECK REQUIREMENTS.

(a) Background checks must be submitted to the Department for a criminal fitness determination on all subject individuals in accordance with OAR chapter 407-007-0200 to 407-007-0370, and 407-007-0600 to 0640, including before a subject individual's change in position.

(A) On or after July 28, 2009, no individual may be a licensee, or employed in any capacity in a facility, who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(B) Subject individuals who are employees and hired before July 28, 2009 are exempt from subsection (a) of this section provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

(C) Background checks are to be completed every two years on all subject individuals.

(b) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual may be approved to work in multiple facilities under the same operational entity. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various facilities.

(3) EMPLOYMENT APPLICATION. An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse. The licensee must check all potential employees against the Oregon State Board of Nursing (Board) and inquire whether the individual is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the individual or any substantiated abuse findings against a nursing assistant.

(4) Reasonable precautions must be exercised against any condition that may threaten the health, safety, or welfare of residents.

(5) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and must be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license.

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility.

(c) The current facility staffing plan.

(d) A copy of the most recent re-licensure survey, including all revisits and plans of correction as applicable.

(e) The Ombudsman Notification Poster.

(f) Other notices relevant to residents or visitors required by state or federal law.

(6) NOTIFICATION. The facility must notify the Department's Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

(a) Any change of the administrator of record.

(b) Severe interruption of physical plant services where the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food.

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable.

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility.

(e) Unusual resident death or suicide.

(f) A resident who has eloped from the facility and has not been found within 24 hours.

(7) POLICIES AND PROCEDURES. The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment. The facility must develop and implement:

(a) A policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in his or her daily living.

(b) A written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) Effective methods of responding to and resolving resident complaints.

(d) All additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition and Monitoring), OAR 411-054-0045 (Resident Health Services), and OAR 411-054-0085 (Refunds and Financial Management).

(e) A policy on smoking.

(A) The smoking policy must be in accordance with:

(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(ii) The rules in OAR chapter 333, division 015; and

(iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(f) A policy for the referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident.

(g) A policy on facility employees not receiving gifts or money from residents.

(8) RECORDS. The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility, the licensee must provide the Department with written notification of the location of all records.

(9) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

(10) DISCLOSURE - RESIDENCY AGREEMENT. The facility must provide a Department designated Uniform Disclosure Statement (form SDS 9098A) and Consumer Summary Statement (APD form 9098 CS) to each individual who requests information about the facility. The residency agreement and the disclosure information described in subsection (a) of this section must be provided to all potential residents before move-in. All disclosure information and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by the Department before distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition.

(B) Payment provisions including the basic rental rate and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable.

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided.

(D) Policy for increases, additions, or changes to the rate structure. The disclosure must address the minimum

requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan.

(E) Refund and proration conditions.

(F) A description of the scope of resident services available according to OAR 411-054-0030.

(G) A description of the service planning process.

(H) Additional available services.

(I) The philosophy of how health care and ADL services are provided to the resident.

(J) Resident rights and responsibilities.

(K) The facility's system for packaging medications including the option for residents to choose a pharmacy that meets the requirements of ORS 443.437.

(L) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move consistent with OAR 411-054-0080.

(M) Resident rights pertaining to notification of involuntary move-out.

(N) Notice that the Department has the authority to examine resident records as part of the evaluation of the facility.

(O) The facility's staffing plan.

(P) Additional elements as listed in 411-054-0027-(2).

(b) In addition to the disclosures described in paragraph (a) of this section, the facility must also provide a separate Consumer Summary Statement that includes:

(A) A summary of the services provided by the facility.

(B) A summary of the services and types of care the facility does not provide.

(C) A statement that, if the facility is not capable of meeting the resident's needs for care and services, the facility may require the resident to move to another facility or care setting, in accordance with OAR 411-054-0080.

(D) A statement explaining that, if a resident leaves the facility to receive acute medical, psychiatric, nursing or other specialized care, the facility will evaluate the facility's ability to meet the resident's care needs before the resident is permitted to return to the facility, in accordance with OAR 411-054-0080(6).

(E) An explanation of the resident's right to appeal should the facility either require the resident to leave the facility, or not permit the resident to return following treatment as described in paragraph (D). Appeal rights are explained in OAR 411-054-0080(7).

(F) A statement as to whether the facility will arrange or coordinate hospice care for a resident upon request.

(c) The information in the summary statement outlined in subsection (b) above must:

(A) Be in writing.

(B) Be written in plain English.

(C) Be explained to the individual or the person acting on behalf of the individual in a manner the individual or representative understands.

(D) Be provided separately from all other disclosure documents, such as the Uniform Disclosure Statement (DHS form 9098A), and the facility's Residency Agreement.

(E) Be signed by the individual or the person acting on behalf of the individual, acknowledging that the individual or representative understands the content and implications of the information.

~~(b)~~(d) The facility may not include any provision in the residency agreement, summary statement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.

~~(e)~~(e) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to the resident's designated representative.

~~(d)~~(f) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed, emailed, or mailed to the Department before distribution.

Stat. Auth.: ORS 181.534, 410.070, 443.004, 443.450

Stats. Implemented: ORS 181.534, 443.004, 443.400-443.455, 443.991

411-054-0320 Quality Measurement Program and Council

(Temporary effective 01/01/2020 to 06/28/2020)

(1) The purpose of the Quality Measurement Program is to allow facilities and the public to compare residential care and assisted living facility performance on each quality metric. The Department shall provide and maintain a web-based report based on metrics defined in Or Laws 2017, ch 679, § 15(1) and any other metrics determined by the Quality Measurement Council. The first report from this program will be published July 1, 202~~1~~0.

(2) Quality Measurement Council. The Quality Measurement Council is appointed by the Governor, and consists of the following members:

- (a) One individual representing the Oregon Patient Safety Commission.
- (b) One individual representing residential care facilities or assisted living facilities.
- (c) One consumer representative from an Alzheimer's advocacy organization.
- (d) One licensed health care practitioner with experience in geriatrics.
- (e) Two individuals associated with academic institutions who have expertise in research data and analytics and community-based care and quality reporting.
- (f) The Long-Term Care Ombudsman or a designee of the Long-Term Care Ombudsman.
- (g) One individual representing the Department.

(3) A staff coordinator shall be assigned by the Department to support the council. The staff coordinator will assist the council as needed and ensure the annual report required by Or Laws 2017, ch 679, § 15(3) and (4) are implemented.

(4) The council shall determine the form and manner for facilities to report metrics for the prior calendar year. Data that identifies a resident is excluded from this requirement.

(a) In developing quality metrics, the council shall consider whether:

- (A) Reported data reflects and promotes quality care; and
- (B) Reporting the data is unnecessarily burdensome on residential care and assisted living facilities.

(b) On or after January 1, 2022, the council may update, by rule, the quality metrics to be reported by residential care and assisted living.

(5) Annual facility reports.

(a) All residential care and assisted living facilities shall report required metrics to the Department no later than January 31 of each year. The first reports are due January 31, 202~~1~~0.

(b) Each facility shall report the following quality metrics for the prior calendar year:

(A) Retention of direct care staff.

(B) Falls resulting in physical injury.

(C) Use of antipsychotic medication for nonstandard purposes.

(D) Facility compliance with staff training requirements.

(E) Results of an annual resident satisfaction survey conducted by an independent entity.

(F) A metric that measures the quality of the resident experience.

(G) Any other metrics determined by the council.

(6) Annual report from the Department.

(a) The Department shall develop an annual report by July 1st that is based on the information provided by all reporting residential care and assisted living facilities. This report shall be made available online to each facility. The first report is due July 1, 202~~1~~0.

(b) The report shall be in a standard format and written in plain language.

(c) The report must include data compilation, illustration, and narratives. The report also must:

(A) Describe statewide patterns and trends that emerge from the collected data.

(B) Describe compliance data maintained by the Department.

(C) Identify facilities that substantially fail to report data as required.

(D) Allow facilities and the public to compare a facility's performance on each quality metric, by demographics, geographic region, facility type, and other categories the Department believes may be useful to consumers and facilities.

(E) Show trends in performance for each quality metric.

(F) Identify patterns of performance by geographic regions, and other categories the Department believes will be useful to consumers.

(G) Identify the number, severity, and scope of regulatory violations by each geographic region.

(H) Show average timelines for surveys and investigations of abuse or regulatory noncompliance.

(d) Quality metric data reported to the Department under this section may not be used against the facility, as required under Or Laws 2017, ch 679, § 15(7). This section does not exempt a facility from complying with state law. Also, the Department may use quality metric data obtained during the normal course of business or compliance activity, as required by Or Laws 2017, ch 679, § 15(8).

(7) Online Training. The Department shall develop online training modules for facilities and the public.

(a) Training modules shall address the top two statewide issues identified by surveys or reviews of facilities during the prior year.

(b) Training modules shall be available and accessible by January 1, 2019.

(c) The Department shall post and regularly update the data used to prepare the report.

Stat. Auth.: ORS 410.070, 443.450

Stats. Implemented: Or Laws 2017, ch 679, §15