

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION
For internal agency use only.

Department of Human Services, Aging and People with Disabilities (APD)	411
Agency and Division Name	Administrative Rules Chapter Number
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FILING CAPTION
(Must be 15 words or fewer)

Nursing facilities must employ an additional CNA for every five individuals receiving the Bariatric Rate

Agency Approved Date: [8-27-2020]

Effective Date: [09-03-3030] through [03-01-2021]

RULEMAKING ACTION

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

ADOPT:

AMEND:

411-085-0005, 411-086-0100

SUSPEND:

RULE SUMMARY:

Include a summary for each rule included in this filing.

411-085-0005 Definitions - Adds a definition for "Bariatric rate."

411-086-0100 Nursing Services: Staffing – Adds a section indicating that for individual residents receiving the bariatric rate the Nursing Facility is required to employ an additional Certified Nursing Assistant (CNA) above

the standard staffing ratio for every 5 residents. Therefore, for every resident receiving the bariatric rate, the facility will be required to provide an additional CNA for every 1-5 residents, a second additional CNA for 6-10 residents, a third CNA for every 11-15 residents, etc.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

With the adoption of the “Bariatric Criteria and Services” added to OAR 411-070-0087, effective July 1, 2020, OAR 411-086-0100 needs to be amended to add the requirement for additional CNA staff. OAR 411-70-0087(2) requires an additional CNA to be on duty and available for every 5 bariatric service residents in the facility. This needs to be added to the OAR 411-086-0100 NF staffing rules. A definition for “Bariatric rate” needs to be added to OAR 411-085-0005 to improve clarity and better understanding of the staffing requirement in OAR 411-086-0100.

Justification of Temporary Filing:

Failure to act promptly and immediately amend OAR chapter 411, divisions 085 and 086 will result in serious prejudice to the public interest, the Commission, and bariatric residents. These rules need to be adopted promptly so that nursing facilities receiving the additional bariatric rate for bariatric residents will comply with OAR 411-070-0087(2). OAR chapter 411, division 86 needs to be amended promptly to ensure nursing facilities provide an additional CNA for every 5 bariatric individuals in their facility.

Documents Relied Upon, and where they are available:

None.

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities 08-27-2020
Signature Date

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

**CHAPTER 411
DIVISION 86**

**NURSING FACILITIES/LICENSING –
ADMINISTRATION AND SERVICES**

411-086-0100 Nursing Services: Staffing
(Temporary effective 9/3/2020 – 3/1/2021)

(1) STAFFING PLAN.

(a) The facility must have and implement a written plan that:

(A) Ensures staffing sufficient to meet the minimum staffing requirements described in sections (3), (4), and (5) of this rule;

(B) Ensures staffing sufficient to meet the needs of each resident; and

(C) Identifies procedures to obtain required staff when absences occur.

(b) The facility must maintain a written, weekly staffing schedule showing the number and category of staff assigned to each shift and the person to be called in the event of any absence.

(2) DAILY STAFF PUBLIC POSTING.

(a) The facility must have the number of on-duty nursing staff publicly posted 24 hours each day using form SDS 0717 and the Nursing Assistant (NA) Staff Ratio Chart form SDS 0717A.

(A) The posted forms must be prominently displayed in a public area and readily accessible to residents and visitors as described in OAR 411-085-0030(1)(b).

(B) The posted forms must be at least 8.5 x 14 inches and printed in a minimum font size of 16.

(C) The staffing information must be an accurate reflection of the actual staff working each shift.

(b) The posted staffing forms must include:

(A) Facility name;

(B) Current date;

(C) Current resident census per shift;

(D) The total number and actual hours worked by registered nurses (RNs), licensed practical nurses (LPNs), and nursing assistants (CNAs and NAs) directly responsible for resident services per shift; and

(E) The minimum staffing standard, nursing assistant to resident ratio, referenced in section (5)(c) of this rule.

(c) Upon oral or written request, the facility must make direct care staffing data available to the public for review at a cost not to exceed the community standard.

(d) The facility must maintain the posted nurse staffing data for a minimum of 18 months.

(3) **MINIMUM STAFFING, GENERALLY.** Resident service needs must be the primary consideration in determining the number and categories of nursing personnel needed. Nursing staff must be sufficient in quantity and quality to provide nursing services for each resident as needed, including restorative services that enable each resident to achieve and maintain the highest practicable degree of function, self-care, and independence, as determined by the resident's care plan. Such staffing must be provided even though it exceeds other requirements specified by this rule or specified in any waiver.

(4) **MINIMUM LICENSED NURSE STAFFING.**

(a) Licensed nurse hours must include no less than one RN hour per resident per week.

(b) When an RN serves as the administrator in the temporary absence of the administrator, the RN's hours must not be used to meet minimum nursing hours.

(c) In facilities with 41 or more beds, the hours of a licensed nurse who serves as facility administrator must not be included in any licensed nurse coverage required by this rule.

(d) The licensed nurse serving as a charge nurse must not be counted toward the minimum staffing requirement under section (5)(c) of this rule.

(e) The facility must have a licensed charge nurse on each shift 24 hours per day.

(A) An RN must serve as the licensed charge nurse for no less than eight consecutive hours between the start of day shift and the end of evening shift, seven days a week.

(B) The Director of Nursing Services may serve as the charge nurse only when the facility has 60 or fewer residents.

(C) Section (4)(e) of this rule may be waived by the Department of Human Services (Department). The request for waiver must comply with OAR 411-085-0040 and must be reviewed annually. The waiver shall be considered by the Department if the facility certifies that:

(i) The facility has been unable to recruit appropriate personnel despite diligent efforts, including offering wages at the community prevailing rate for nursing facilities;

(ii) The waiver does not endanger the health or safety of residents; and

(iii) An RN or physician is available and obligated to immediately respond to telephone calls from the facility.

(5) MINIMUM CERTIFIED NURSING ASSISTANT STAFFING.

(a) The facility must determine the specific time frame for beginning and ending each consecutive eight-hour shift using one of the following options:

(A) Option 1.

(i) Day shift from 5:30 a.m. to 1:30 p.m.

(ii) Evening shift from 1:30 p.m. to 9:30 p.m.

(iii) Night shift from 9:30 p.m. to 5:30 a.m.

(B) Option 2.

(i) Day shift from 6 a.m. to 2 p.m.

(ii) Evening shift from 2 p.m. to 10 p.m.

(iii) Night shift from 10 p.m. to 6 a.m.

(C) Option 3.

(i) Day shift from 6:30 a.m. to 2:30 p.m.

(ii) Evening shift from 2:30 p.m. to 10:30 p.m.

(iii) Night shift from 10:30 p.m. to 6:30 a.m.

(D) Option 4.

(i) Day shift from 7 a.m. to 3 p.m.

(ii) Evening shift from 3 p.m. to 11 p.m.

(iii) Night shift from 11 p.m. to 7 a.m.

(b) Each resident must have assigned and be informed of the nursing assistant responsible for his or her care and services on each shift. The numbers listed in this rule represent the minimum staffing requirement. The numbers do not represent sufficient nursing staff. The number of staff necessary to meet the needs of each resident determines sufficient nursing staff.

(c) The number of residents per nursing assistant must not exceed the following ratios:

(A) Prior to October 1, 2013:

(i) DAY SHIFT: 1 nursing assistant per 7 residents.

(ii) EVENING SHIFT: 1 nursing assistant per 11 residents.

(iii) NIGHT SHIFT: 1 nursing assistant per 18 residents.

(B) Effective October 1, 2013 to March 30, 2014, each facility must, in addition to the nursing assistant staff to resident ratios listed in subsection (A) of this section, increase nursing assistant staffing to the minimum standard of 2.46 hours per resident day in a 24-hour period of time from the start of day shift until the end of night shift seven days a week.

(C) Effective March 31, 2014:

(i) DAY SHIFT: 1 nursing assistant per 7 residents.

(ii) EVENING SHIFT: 1 nursing assistant per 9.5 residents.

(iii) NIGHT SHIFT: 1 nursing assistant per 17 residents.

(d) Each facility must submit a quarterly staffing report to the Department using the Department's approved method and format. The report must provide an accurate daily account of resident census and nursing assistant staffing levels for each shift.

(A) The facility must submit the report to the Department no later than the end of the month immediately following the end of each calendar quarter. (Example: For the calendar quarter ending March 31, the report must be received no later than April 30.)

(B) The report must specify the shifts in which the minimum staffing standards as set forth in section (5)(c) of this rule were not met.

(C) Upon the Department's request, the facility must provide documents to support the quarterly staffing report, including payroll records.

(e) This rule does not prohibit nursing assistants from providing services to a resident to whom they are not assigned.

(f) The facility must ensure that nursing assistants only perform those tasks for which they are competent and qualified to perform and that are permitted by ORS chapter 678 and OAR 851-063-0030.

(g) Nursing assistants with a restricted duty status may be counted toward meeting the minimum staffing ratio as set forth in section (5)(c) of this rule if the nursing assistant is able to perform 90 percent of the authorized duties and responsibilities, with or without accommodation, required by a certified nursing assistant as determined by the Oregon State Board of Nursing (OAR 851-063-0030).

(h) The facility must ensure that a nursing assistant is not assigned more residents than the number for which the nursing assistant is able to meet the individual service needs.

(i) The facility must have a minimum of two nursing staff on duty within the facility at all times.

(j) Nursing staff must be present at all times in each detached building, distinct and segregated area including those separated by closed doors, and on each level or floor where residents are housed.

(k) Nursing assistants do not include dining assistants.

(l) Nursing assistants serving as restorative aides must not be counted toward the minimum staffing requirement under section (5)(c) of this rule.

(m) A facility must not employ any person as a nursing assistant for longer than four months from the date of hire without an Oregon State Board of Nursing issued CNA 1 certification.

(n) The facility must ensure no more than 25 percent of the nursing assistants assigned to residents per shift pursuant to section (5)(c) of this rule are uncertified nursing assistants.

(o) If an individual meets the criteria documented in 411-070-0087, and the Department has authorized the bariatric rate, the facility must hire one (1) additional Certified Nursing Assistant, above the licensing staffing standard set forth in (5)(c) of this rule, for every five (5) individuals receiving the bariatric rate.

(6) CERTIFIED MEDICATION AIDES.

(a) The facility must ensure that all nursing assistants administering non-injectable medications are certified as nursing assistants and as medication aides. Documentation of these two certifications must be maintained in the facility.

(b) The certified medication aide assigned to administer medications must not be counted toward meeting the minimum staffing requirements for direct service of residents referenced at section(5)(c) of this rule.

Stat. Auth.: ORS 410.070, 410.090, 441.055, 441.073, & 441.615

Stats. Implemented: ORS 410.070, 410.090, 441.055, 441.073, & 441.615