

# Nursing Facility Closure Requirements

March 13, 2014

## **Nursing Facility Closure Requirements**

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The closure of a nursing facility is not an easy thing to do. The facility owner who has made the difficult decision to close the facility has many tasks to complete, resident rights to honor, and obligations to meet even after the last resident has left the facility. The purpose of this packet is to provide guidance about the closure process so that each resident's transfer to her or his new home is as smooth as possible.

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### Checklist

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| <p><i>90 days prior to proposed closure date</i></p>      | <p><b>-Written Notice to NF Licensing of the facility closure, including:</b></p> <ul style="list-style-type: none"> <li>• <i>Draft Resident Transition Plan</i></li> <li>• <i>Draft Facility Closure Plan</i></li> <li>• <i>Proposed Closure Date</i></li> <li>○ NF Licensing will schedule a meeting with the provider and DHS Aging &amp; People with Disabilities (APD) as soon as possible to discuss closure operations.</li> </ul>        |
| <p><i>60 days prior to the approved closure date.</i></p> | <ul style="list-style-type: none"> <li>- <b><i>Letter to Residents, Residents' families or representatives and LTCO.</i></b></li> <li>○ NF Licensing will review/approve the facility's Letter to Residents before it is distributed.</li> <li>- <b><i>Letter to Residents will include announcement of Family Meeting.</i></b></li> <li>○ NF Licensing will review/approve the agenda for the Family Meeting before it is announced.</li> </ul> |
| <p>One to two weeks following Letter to Residents</p>     | <p>Family meeting is conducted at the facility.</p>  |
| <p>Weekly and as needed</p>                               | <p>Communication updates with the facility and DHS.</p>  |
| <p>At closure</p>   | <p>Immediately notify DHS Local Manager and NF Licensing.</p>  |
| <p>Within 30 days after closure</p>                       | <p>To NF Licensing:</p> <ul style="list-style-type: none"> <li>▪ Written notice about the location of closed records; and</li> <li>▪ Affidavits for records that were sent with transferred residents.</li> </ul>  |

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### **Resident Transition Plan**

The provider will develop a plan for resident transition from the facility. A draft of the Resident Transition Plan is submitted to NF Licensing for review and collaboration to assure that the plan will provide transitions in a safe, orderly manner to settings that are appropriate in terms of quality, services and location. Elements include:

**- *Additional Facility Staff***

Identify additional staff or consultants who will be available to assist; their roles, schedules and contact information.

**- *Update Resident Assessments***

Identify how resident assessments will be updated, and by whom, to assure accurate transition planning for each residents.

**- *Working Effectively with Partners***

Describe plans for working with the local Aging and People with Disabilities (APD) case managers, transition coordinators, NF Licensing and the Office of the Long-Term Care Ombudsman (LTCO). Elements include:

– *Planning resident transitions with APD Case management and transition coordinators*

- Provide a sample communication tool to be used to specify tasks, responsible person, and completion dates for resident transition plans.
- Determine a regular communication plan. Routine meetings between the facility and the local APD office and DHS central office are recommended.
- Identify APD lead workers and transition team composition.

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- Where will APD case managers and transition coordinators be working – is there space in the facility?
- Is there a room at the facility to establish a “command center”?
  
- *Long-Term Care Ombudsman – Deputy and volunteer(s)*
- Identify the deputy Ombudsman and volunteer(s) and their availability to assist residents and their families.

### **- Receiving Facilities**

Identify potential transition settings that are available and appropriate for residents.

### **- Transition Operations**

Describe the resident transition process, addressing the rate that residents will transfer from the facility, days and times that transfer will be scheduled and transportation resources available.

- *Transfer guidelines – for the facility that is closing*
  - *Rate.* Determine the maximum number of residents that will be moved each day.
  
  - *Last ones out.* No one resident left alone in the building. Last is a group of three or four.
  
  - *Weekends.* Will residents be transferred during the weekend?
  
  - *Control.* Transfer team leader/local DHS management controls the transfer rate based on:
    - resident need
    - the facility’s ability to manage discharge planning
    - the recipient facilities’ ability to admit
  
  - *Medical Records.* Assure that medical records and physician orders transfer with the resident. The entire medical resident will transfer

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with the resident. The facility obtains an *Affidavit of Acceptance of Custody* (attached) for each resident's records; a copy of this *Affidavit* is forwarded to NF Licensing.

- *Medications.* For Medicaid residents, medications are issued monthly according to the medical benefit and are the property of the resident; all medications transfer with the resident.
  
- *Transfer guidelines – for the receiving facilities*
  - *Rate.* Determine the maximum number of residents that will be admitted each day.
  
  - *Weekends.* Will residents be admitted during the weekend?
  
  - *Control.* Transitions to receiving facilities will be planned collaboratively and based on both:
    - resident need and preference; and
    - the facility's ability to manage admissions
  
- *Transportation.*
  - Who (the facility or the case manager/transition coordinator) will provide/arrange for transportation for residents to visit and move to new facility?
  
  - Will CNAs accompany residents as they visit or move to new facility?
  
  - Will there be other type of workers who will assist with moving? Who and what are their roles?

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### **Facility Closure Plan**

The facility will develop a Facility Closure Plan. A draft of the Facility Closure Plan is submitted to NF Licensing for review and collaboration, to assure that facility operations and quality services are maintained throughout the closure period. Elements include:

- ***Determination of Proposed Date of Closure***

Collaborate with DHS to assure that the proposed closure date meets requirements for 60-day notice to residents and to assure DHS resources will be available to provide maximum assistance during the proposed closure period.

- ***Letter to Residents***

The Letter to Residents meets the requirement for written notice to residents, residents' families or representatives and the Office of the Long-Term Care Ombudsman (LTCO) 60 days prior to the proposed date of closure.

The letter briefly explains the reason for closure, announces the family meeting, and affirms that the facility, DHS and LTCO will work together with the resident and their families or representatives to assure that the most appropriate transition setting will be arranged and that quality services will be maintained throughout the closure period.

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### **- Family Meeting**

The facility will coordinate with DHS and the Office of the Long-Term Care Ombudsman (LTCO) to schedule a Family Meeting that will occur approximately one week after the Letter to Residents is issued. The Family Meeting is an opportunity for the residents and their families or representatives to meet the facility leadership team, representatives from the local APD office, representatives from LTCO and representatives from DHS central office who will be working collaboratively together to assist residents' transition to new care settings. The meeting will identify roles, explain the assessment and transition process and provide an opportunity to have questions answered. The Family Meeting is an important opportunity at the beginning of the closure process to assure responsiveness to resident and family needs by the facility, the Department and the LTCO. NF Licensing will review and support the facility to develop a Family Meeting agenda that meets these goals. Elements include:

- Date and time of Family Meeting.
- Agenda of meeting.
- Determine the host of meeting.
- Confirm the participants of the meeting: Facility owner(s), facility leadership team, LTCO, APD (local office/central office), NF licensing.

### **- Communication with DHS**

The provider and NF licensing will determine a communication method and frequency for updates about the progression of closure operations.

### **- Operations During Closure**

The closure plan includes submission of a plan that specifies practices that includes the following:



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- *Facility Staff.* Plan for maintaining staffing levels, mechanisms (incentives) to assure staff retention and resources that will be utilized to assist staff with employment transition.
  - *Operations.* Description of operations during the closure period, identify sources of supplemental funding.
  - *Facility Leadership.* Identify the primary contact responsible for daily facility operations during the closure period.
  - *Facility Oversight.* Identify the primary contact responsible for the oversight of those managing the facility during the closure period.
- **Media/Press Releases.**  
Determine whether to contact media to announce the closure. Determine basic themes and review process (if any) for press releases.

## **Applicable Oregon Administrative Rules**

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

- (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 Division may grant the licensee an inactive license for up to 24 months

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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 Chapter 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 Division 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) and all other applicable requirements; and
- (e) The licensee's written request must include information which assures the Division that the new facility will provide an improved quality of care which is needed in the community and which is determined by the Division 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 Division 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 Division regarding the status of the new building.
  - (A) The first report must be received by the Division between six months and nine months after the original facility is closed.

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- (B) The second report must be received by the Division 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 Division may extend the inactive license for an additional 18 months. The licensee must submit written request to the Division 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 Division 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 which 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.

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(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 Division 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 Division.

### **411-085-0025 Change of Ownership or Operator and Closure**

*(Temporary Effective 10/7/2013 - 4/5/2014)*

(1) CHANGE OF OWNERSHIP OR OPERATOR.

(a) When a change of ownership or a change of operator is contemplated, a licensee and a prospective licensee must each notify the Department in writing of the contemplated change. The notice of change of ownership or 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 notice of change of ownership or operator 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.); and

(E) A complete, signed nursing facility application from the prospective licensee.

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(b) A prospective licensee may not assume possession or control of a facility until after the prospective licensee has been notified by the Department that the prospective licensee's application has been approved.

(c) The current licensee is responsible for the operation of the facility and resident care provided therein until a new license is issued to a new owner or operator or the facility operation is closed.

**(2) FACILITY CLOSURE.** In accordance with 42 CFR 483.75(r) and (s) and 42 CFR 483.12(a)(8), a nursing facility administrator must assure satisfactory completion of the following:

**(a) WRITTEN NOTICE IN ADVANCE OF FACILITY CLOSURE.**

**(A) DEPARTMENT NOTICE.** 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 notice of facility closure sent to the Department must include the following:

**(i) Department-approved resident transition plan:**

**(I) Resident-specific transition plans based on current and accurate assessments of each resident's needs, preferences, and best interests and assurances that each resident's transition setting shall be appropriate in terms of quality, services, and location;**

**(II) Identification of potential transition settings that are available and appropriate; and**

**(III) Description of the resident transition process addressing the rate that residents shall transfer from the facility, days and times that transfers shall be**

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scheduled, transportation resources available for resident transfers, and a sample communication tool to be used to specify tasks, responsible person, and completion dates for resident transition plans.

**(ii) Department-approved facility closure plan:**

**(I) Department-approved letter to residents, residents' representatives, and other required parties;**

**(II) Department-approved Family Meeting agenda;**

**(III) Plan for staff communication, retention, and employment support;**

**(IV) Description of operations assuring service and supply provision during closure period;**

**(IV) Identification of the primary contact responsible for daily facility operations during the closure period;**

**(VI) Identification of the primary contact responsible for the oversight of those managing the facility during the closure period; and**

**(VII) Identification of any and all sources of supplemental funding to assure operations.**

**(iii) Department-approved estimated date of closure.**

**(B) NOTICE TO RESIDENTS AND OTHER REQUIRED PARTIES.**

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(i) **VOLUNTARY CLOSURE.** A facility administrator must notify the residents, the residents' representatives or other responsible parties, and the Office of the State Long-Term Care Ombudsman of an impending closure in writing, using a Department-approved letter, at least 60 days prior to the proposed date of closure.

(ii) **INVOLUNTARY CLOSURE.** A facility administrator must notify the residents, the residents' representatives or other responsible parties, and the Office of the State Long-Term Care Ombudsman of impending closure on a date determined by the Department when closure or termination of the facility's Medicare and/or Medicaid provider agreement is determined by the Centers for Medicare and Medicaid Services or the Department.

(iii) Notification to the residents, the residents' representatives, and the Office of the Long-Term Care Ombudsman of impending closure must include the following:

(I) Department-approved summary of the resident transition and facility closure plans;

(II) Department-approved estimated date of closure; and

(III) Assurances that resident transition planning shall consider resident needs, choice, and best interests and that each resident's transition setting shall be appropriate in terms of quality, services, and location.

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### **(b) ADMISSIONS.**

(A) A facility may not admit new residents on or after the date on which the 60-day written notification of facility closure has been issued.

(B) A resident who is eligible to return to a facility following hospitalization per OAR 411-088-0050 may return to the facility that is closing.

(C) A resident who is eligible to readmit to a facility following discharge per OAR 411-088-0060 may readmit to the facility that is closing.

(D) A resident who is temporarily absent from a facility per OAR 411-070-0110 may return to the facility that is closing.

(c) **SERVICES AND OPERATION DURING 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.

(d) **RESIDENT RECORDS.** Clinical records must be transferred and retained according to OAR 411-086-0300. (e) **ADMINISTRATOR RESPONSIBILITY.** In accordance with 42 CFR 488.446, civil monetary penalties shall be imposed on the individual administrator that fails to comply with 42 CFR 483.75(r).

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



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### **411-085-0210 Facility Policies**

*(Temporary Effective 10/7/2013 - 4/5/2014)*

(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;

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- (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;
- (u) Resident grievances; and
- (v) Facility closure. The administrator must assure compliance with 42 CFR 483.75(s) and OAR 411-085-0025.

(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, & 441.615 Stats. Implemented: ORS 441.055 & 441.615

### **411-086-0300 Clinical Records**

- (6) Record Retention. All clinical records shall be kept for a period of five years after the date of last discharge of the resident. A clinical record

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for each resident for whom care has been provided in the previous six months shall be **immediately available for review by Division representatives upon request.**

- (7) Resident Transfer. When a resident is transferred to another facility, the following information shall accompany the resident:
  - (a) The name of the facility from which transferred;
  - (b) The names of attending physicians prior to transfer;
  - (c) The name of physician to assume care;
  - (d) The date and time of discharge;
  - (e) Most recent history and physical;
  - (f) Current diagnosis, orders from a physician for immediate care of the resident, nursing, and other information germane to the resident's condition;
  - (g) A copy of the discharge summary. If the discharge summary is not available at time of transfer, it shall be transmitted as soon as available, but no later than seven days after transfer; and
  - (h) A copy of the current Directive and Power of Attorney for Health Care, if any.
  
- (8) Ownership of Records. Clinical records are the property of the licensee. The clinical record, either in original or microfilm form, shall not be removed from the control of the facility except where necessary for a judicial or administrative proceeding. Authorized representatives of the Division shall be permitted to review and obtain copies of clinical records as necessary to determine compliance with OAR Chapter 411:

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- (a) If a facility changes ownership all clinical records in original or microfilm form shall remain in the facility and ownership shall be transferred to the new licensee;
- (b) In the event of dissolution of a facility, the administrator shall ensure that clinical records are transferred to another health care facility or to the resident's primary care physician, and shall notify the Division as to the location of each clinical record. The party to whom the records are transferred must have agreed to serve as custodian of the records.

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### **411-088-0010 Involuntary Transfer**

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

### **411-088-0020 Basis for Involuntary Transfer**

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

(1) Medical and Welfare Reasons:

- (e) A resident may be transferred when governmental action results in the revoking or declining to renew a facility's certification or license;
- (f) A resident may be transferred when the facility intends to terminate operation as a nursing facility; and:
  - (A) Certifies in writing to the Division the license is to be irrevocably terminated; and
  - (B) Establishes to the satisfaction of the Division it has made arrangements to accomplish all necessary transfers in a safe manner with adequate resident involvement and follow-up for each resident to minimize negative effects of the transfer;

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### **411-088-0070 Notice Requirements** *(Temporary Effective 10/7/2013 - 4/5/2014)*

#### **(1) NOTICE LENGTH:**

(a) Any person transferred must be provided a minimum of 30 days prior written notice (Exhibit 1) by the facility unless otherwise provided under this section.

(b) Any person may be transferred under OAR 411-088-0020(1)(b) (Life or Safety Threat) or OAR 411-088-0020(1)(c) (Behavior Problem) with fewer than 30 days prior written notice (Exhibit 1) if the reason for such transfer constitutes an emergency. However, the facility must give as much prior written notice (Exhibit 1) as the emergency permits.

(c) Any resident may be involuntarily transferred under OAR 411-088-0020(1)(d) (Medical Emergency) with no prior notice. However, the facility must give notice (Exhibit 1 or 2) before giving the resident's bed to another person.

(d) Any person involuntarily transferred under OAR 411-088-0020(1)(g) (Post-Hospital Extended Care Services or Specialized Services) and cared for in the facility for less than 30 days may be transferred with fewer than 30 days prior written notice.

(A) In such cases the person must be provided with notice no shorter than the length of current stay in the nursing facility.

(B) The notice must be issued at the time of admission or as soon as the length of time for projected course of treatment is estimated.

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(C) Section (1)(d) of this rule does not apply if the resident had a right of readmission to the same facility prior to the hospital, surgical, or emergency department services.

(e) Any resident involuntarily transferred under OAR 411-088-0020(1)(b) or (e) (Governmental Action) must be provided a minimum of 14 days prior written notice (Exhibit 1).

(f) Any person denied the right of return or the right of readmission must be notified by the facility immediately and provided written notice (Exhibit 2), mailed (registered or certified), or delivered in person within five days from the date of request for return or readmission. A denial of right of return or readmission is allowable only if there is good cause to believe the resident lacks such right (see OAR 411-088-0050, OAR 411-088-0060, and OAR 411-088-0080).

(g) Any resident may voluntarily transfer from a facility. However, the facility must provide notice (Exhibit 1) pursuant to this rule and must maintain the signed consent form in the resident's medical record.

(h) In the case of a facility closure, notice must be provided to the resident according to OAR 411-085-0025.

(2) NOTIFICATION LIST. The facility must maintain and keep current in the resident's record the name, address, and telephone number of the resident's legal representative, if any, and of any person designated by the resident or the resident's legal representative to receive notice of the transfer. The facility must also record the name, address, and telephone number of any person who has demonstrated consistent concern for the resident if the resident has no one who is currently involved and who has been designated by the resident.

(3) NOTICE DISTRIBUTION. Notice must be provided to:

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

Stat. Auth.: ORS 441.055 & 441.615 Stats. Implemented: ORS 441.055, 441.600, 441.605, & 441.615