

|->

Chapter 411@ DEPARTMENT OF HUMAN SERVICES, AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

|->

Division 85@ NURSING FACILITIES/LICENSING - GENERALLY

|->

Section 411-085-0005@ Definitions

411-085-0005 Definitions

Unless the context requires otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 70, 85, 86, and 89:

(1)

"AAA" means "Area Agency on Aging" as defined in this rule.

(2)

"Abuse" means: (a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries a reasonable and prudent individual is 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 that results in physical harm, unreasonable discomfort, or serious loss of human dignity. (c) Sexual contact with a resident, including fondling, 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 individual, 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 is unable to 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.

(a)

Any physical injury to a resident that has been caused by other than accidental means. This includes injuries a reasonable and prudent individual is 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 that results in physical harm, unreasonable discomfort, or serious loss of human dignity.

(c)

Sexual contact with a resident, including fondling, 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 individual, 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 is unable to 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.

(3)

"Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.

(4)

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

(5)

"Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(6)

"Applicant" means the individual 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 a sole proprietor, each partner in a partnership, or a corporation that operates a nursing facility on behalf of the nursing facility business owner.

(7)

"Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of

service to individuals in a planning and service area.

(8)

"Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(9)

"APD" means "Aging and People with Disabilities."

(10)

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

(11)

"Bariatric rate" means a rate paid for a Medicaid resident of a nursing facility if the resident meets the criteria described in OAR 411-070-0087.

(12)

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

(13)

"Certified Medication Aide" means "certified medication assistant" as defined in this rule.

(14)

"Certified Medication Assistant" means a certified nursing assistant who has been certified as a medication assistant or medication aide pursuant to ORS chapter 678 and the rules adopted thereunder.

(15)

"Certified Nursing Assistant" means an individual who has been certified as a

nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.

(16)

"Change of Operator" means "change of ownership" as defined in this rule.

(17)

"Change of Ownership" means a change in the individual or entity that owns the facility business, a change in the individual or entity responsible for the provision of services at the facility, or both. Events that change ownership include, but are not limited to: (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.

(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.

(18)

"Control Interest" means "management" as defined in this rule.

(19)

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

(20)

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

(21)

"Drug" has the same meaning set forth in ORS chapter 689.005.

(22)

"Entity" means "Individual" as defined in this rule.

(23)

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

(24)

"Facility" means an establishment that is licensed and certified by the Department as a nursing facility.

(25)

"Facility Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee under ORS 441.277 to 441.323 or the appointment of a temporary manager under ORS 441.333 for a nursing facility or

a residential care facility.

(26)

"Health Care Facility" means a health care facility as defined in ORS 442.015, a residential care facility as defined in ORS 443.400, and an adult foster home as defined in ORS 443.705.

(27)

"Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.

(28)

"Incident of Ownership" means: (a) An ownership interest; (b) An indirect ownership interest; or (c) A combination of direct and indirect ownership interest.

(a)

An ownership interest;

(b)

An indirect ownership interest; or

(c)

A combination of direct and indirect ownership interest.

(29)

"Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(30)

"Individual" means an entity including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit as defined in ORS 442.015 including associations, joint stock companies, insurance companies, the

state, or a political subdivision or instrumentality, including a municipal corporation.

(31)

"Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.

(32)

"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, 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, or complaint investigation.

(33)

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

(34)

"Licensed Nurse" means a registered nurse or a licensed practical nurse.

(35)

"Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.

(36)

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

(37)

"Local Designee of the Department" means the local unit of the Department or the

Area Agency on Aging.

(38)

"Long Term Care Facility" means "nursing facility" as defined in this rule.

(39)

"LPN" means "licensed practical nurse" as defined in this rule.

(40)

"Maintain a Nursing Facility" means "establish a nursing facility" as defined in this rule.

(41)

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

(42)

"Management" means: (a) 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 (b) An interest as an officer or director of an institution, organization, or agency organized as a corporation.

(a)

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

(b)

An interest as an officer or director of an institution, organization, or agency organized as a corporation.

(43)

"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, such as, rooms that are proposed to be licensed as nursing facility resident rooms, but are not currently licensed as nursing facility resident rooms; (d) A major alteration to an existing building; (e) An addition to an existing building; (f) A conversion in use; or (g) Renovation or remodeling of an existing building.

(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, such as, rooms that are proposed to be licensed as nursing facility resident rooms, but are not currently licensed as nursing facility resident rooms;

(d)

A major alteration to an existing building;

(e)

An addition to an existing building;

(f)

A conversion in use; or

(g)

Renovation or remodeling of an existing building.

(44)

"NFPA" means "National Fire Protection Association".

(45)

"Nurse Aide" means "nursing assistant" as defined in this rule.

(46)

"Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.

(47)

"Nursing Assessment" means evaluation of fluids, nutrition, bowel or 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, analysis or evaluation of that data, and utilization of available resource information.

(48)

"Nursing Assistant" means an individual who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes, but is not limited to, a certified nursing assistant, a certified medication assistant, and individuals who have successfully completed a state approved nurse assistant training course.

(49)

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

(50)

"Nursing Facility" means an establishment with permanent facilities, including inpatient beds, that provides 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 may not be delegated to an unlicensed individual. "Nursing Facility" only includes facilities licensed and operated pursuant to ORS 441.020(2).

(51)

"Nursing Facility Administrator" means an individual 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.

(52)

"Nursing Facility Law" means ORS chapter 441 and the rules for nursing facilities adopted thereunder.

(53)

"Nursing Home" means "nursing facility" as defined in this rule.

(54)

"Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in a facility.

(55)

"The Office of Licensing and Regulatory Oversight (OLRO)," through its Nursing Facility Licensing and Survey Units, is the DHS office responsible for the licensing, inspections, surveys, sanctions, and enforcement for non-compliance of nursing facilities, and with APD, is jointly responsible for policy development.

(56)

"Owner" means an individual with an ownership interest.

(57)

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

(58)

"Pharmacist" has the same meaning as set forth in ORS 689.005.

(59)

"Pharmacy" has the same meaning as set forth in ORS 689.005.

(60)

"Physician" means an individual licensed under ORS chapter 677 as a physician.

(61)

"Physician's Assistant" means an individual registered under ORS chapter 677 as a physician's assistant.

(62)

"Podiatrist" means an individual licensed under ORS chapter 677 to practice podiatry.

(63)

"Prescription" has the same meaning as set forth in ORS 689.005.

(64)

"Public or Private Official" means: (a) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident; (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency; (c) Employee of the Department, Oregon Health Authority, Area Agency on Aging, county health department, community mental health program, community developmental disability program, or nursing facility; (d) Individual who contracts to provide services to a nursing facility; (e) Peace officer; (f) Clergy; (g) Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist; (h) Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist; (i) Senior center employee; (j) Information and referral or outreach worker; (k) Any public official who comes in contact with elderly individuals in the

performance of the official's official duties; (l) Firefighter or emergency medical technician; (m) Legal counsel for a resident; or (n) Guardian for, or family member of, a resident.

(a)

Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(b)

Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(c)

Employee of the Department, Oregon Health Authority, Area Agency on Aging, county health department, community mental health program, community developmental disability program, or nursing facility;

(d)

Individual who contracts to provide services to a nursing facility;

(e)

Peace officer;

(f)

Clergy;

(g)

Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist;

(h)

Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist;

(i)

Senior center employee;

(j)

Information and referral or outreach worker;

(k)

Any public official who comes in contact with elderly individuals in the performance of the official's official duties;

(l)

Firefighter or emergency medical technician;

(m)

Legal counsel for a resident; or

(n)

Guardian for, or family member of, a resident.

(65)

"Registered Nurse (RN)" means an individual licensed under ORS chapter 678.

(66)

"Rehabilitative Services" means specialized services provided by a therapist or a therapist's assistant to a resident to attain optimal functioning, including, but not limited to, physical therapy, occupational therapy, speech and language therapy, and audiology.

(67)

"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.

(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.

(68)

"Resident" means an individual who has been admitted, but not discharged from a facility.

(69)

"Restorative Aide" means a certified nursing assistant primarily 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.

(70)

"Restorative Nursing" means "restorative services" as defined in this rule.

(71)

"Restorative Services" mean the measures provided by nursing staff and directed toward re-establishing and maintaining a residents' fullest potential.

(72)

"RN" means "registered nurse" as defined in this rule.

(73)

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

(74)

"Significant Other" means an individual designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation

and there is no court-appointed individual, then a significant other means 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 individuals who are not otherwise entitled to such information, or to allow such individuals to make decisions they are not entitled to make on behalf of a resident.

(75)

"Suspected Abuse" means reasonable cause to believe abuse may have occurred.