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

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Division 88@ NURSING FACILITIES/LICENSING - TRANSFERS

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Section 411-088-0020@ Basis for Involuntary Transfer

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

Upon compliance with these transfer rules (OAR 411-088), an involuntary transfer of a resident may be made when one of the reasons specified in this rule exists.

### **(1)**

MEDICAL AND WELFARE REASONS. (a) A resident may be transferred when the resident's physician states in writing that: (A) The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or (B) The facility is unable to meet the resident's needs and the facility has identified another environment available to the resident that may better meet the resident's needs. The Department shall assist the facility in the facility's effort to identify another environment for the resident. (b) A resident may be transferred when the Department Administrator or the State Fire Marshal states in writing the safety of the resident (or other people in the facility) is endangered and justifies the transfer; (c) A resident may be transferred when the behavior of the resident creates a serious and immediate threat to the resident or to other residents or people in the facility and all reasonable alternatives to transfer (consistent with the attending physician's orders) have been attempted and documented in the resident's medical record. Such alternatives may include but are not limited to chemical or physical restraints and medication; (d) A resident may be transferred when the resident has a medical emergency; (e) A resident may be transferred when governmental action results in a facility's certification or license being

revoked or not renewed; (f) A resident may be transferred when a facility intends to terminate operation as a nursing facility. The facility must: (A) Certify in writing to the Department the license is to be irrevocably terminated as described in OAR 411-085-0025; and (B) Establish to the satisfaction of the Department that arrangements to accomplish all necessary transfers are made in a safe manner with adequate resident involvement and follow-up for each resident to minimize negative effects of the transfer; (g) A resident receiving post-hospital extended care services or specialized services from a facility under a physician's order may be transferred from the facility when, according to the physician's written opinion, the resident has improved sufficiently and no longer needs the post-hospital extended care services or specialized services provided by the facility. (A) The purpose of the admission, including the projected course of treatment and the expected length of stay, must be agreed to in writing by the resident (or the resident's legal representative who is so authorized to make such an agreement) at or prior to admission. (B) The facility must identify another environment available to the resident that is appropriate to meet the resident's needs. (C) The notice of transfer may be issued at the time of admission or later and must be based upon the projected course of treatment.

**(a)**

A resident may be transferred when the resident's physician states in writing that: (A) The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or (B) The facility is unable to meet the resident's needs and the facility has identified another environment available to the resident that may better meet the resident's needs. The Department shall assist the facility in the facility's effort to identify another environment for the resident.

**(A)**

The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or

**(B)**

The facility is unable to meet the resident's needs and the facility has identified another environment available to the resident that may better meet the resident's needs. The Department shall assist the facility in the facility's effort to identify another environment for the resident.

**(b)**

A resident may be transferred when the Department Administrator or the State Fire Marshal states in writing the safety of the resident (or other people in the facility) is endangered and justifies the transfer;

**(c)**

A resident may be transferred when the behavior of the resident creates a serious and immediate threat to the resident or to other residents or people in the facility and all reasonable alternatives to transfer (consistent with the attending physician's orders) have been attempted and documented in the resident's medical record. Such alternatives may include but are not limited to chemical or physical restraints and medication;

**(d)**

A resident may be transferred when the resident has a medical emergency;

**(e)**

A resident may be transferred when governmental action results in a facility's certification or license being revoked or not renewed;

**(f)**

A resident may be transferred when a facility intends to terminate operation as a nursing facility. The facility must: (A) Certify in writing to the Department the license is

to be irrevocably terminated as described in OAR 411-085-0025; and (B) Establish to the satisfaction of the Department that arrangements to accomplish all necessary transfers are made 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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Certify in writing to the Department the license is to be irrevocably terminated as described in OAR 411-085-0025; and

**(B)**

Establish to the satisfaction of the Department that arrangements to accomplish all necessary transfers are made in a safe manner with adequate resident involvement and follow-up for each resident to minimize negative effects of the transfer;

**(g)**

A resident receiving post-hospital extended care services or specialized services from a facility under a physician's order may be transferred from the facility when, according to the physician's written opinion, the resident has improved sufficiently and no longer needs the post-hospital extended care services or specialized services provided by the facility. (A) The purpose of the admission, including the projected course of treatment and the expected length of stay, must be agreed to in writing by the resident (or the resident's legal representative who is so authorized to make such an agreement) at or prior to admission. (B) The facility must identify another environment available to the resident that is appropriate to meet the resident's needs. (C) The notice of transfer may be issued at the time of admission or later and must be based upon the projected course of treatment.

**(A)**

The purpose of the admission, including the projected course of treatment and the expected length of stay, must be agreed to in writing by the resident (or the resident's legal

representative who is so authorized to make such an agreement) at or prior to admission.

**(B)**

The facility must identify another environment available to the resident that is appropriate to meet the resident's needs.

**(C)**

The notice of transfer may be issued at the time of admission or later and must be based upon the projected course of treatment.

**(2)**

NON-PAYMENT REASONS. A resident may be transferred when there is a non-payment of facility charges for the resident and payment for the stay is not available through Medicaid, Medicare, or other third party reimbursement. (a) A resident may not be transferred if, prior to actual transfer, delinquent charges are paid. (b) A resident may not be transferred for delinquent charges if payment for current charges is available through Medicaid, Medicare, or other third party reimbursement.

**(a)**

A resident may not be transferred if, prior to actual transfer, delinquent charges are paid.

**(b)**

A resident may not be transferred for delinquent charges if payment for current charges is available through Medicaid, Medicare, or other third party reimbursement.

**(3)**

CONVICTION OF A SEX CRIME. (a) A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met: (A) The facility was not notified prior to admission that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; (B) The

facility learns that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; and (C) The resident presents a current risk of harm to another resident, staff, or visitor in the facility as evidenced by: (i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; and (ii) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility. (b) Prior to the move, the facility must contact the Department by telephone and review the criteria in subsection (a) of this section. The Department shall respond within one working day of contact by the facility. The Department of Correction's parole or probation officer must be included in the review, if available. The Department shall advise the facility if rule criteria for immediate move out are not met. The Department shall assist in locating placement options. (c) The facility must issue written notice on the Department approved form. The form must be filled out in its entirety and a copy of the notice delivered in person to the resident or the resident's legal representative, if applicable. Where a resident lacks capacity and there is no legal representative, a copy of the written notice must be immediately faxed to the State Long-Term Care Ombudsman. (d) Prior to the move, the facility must orally review the notice and right to object with the resident or if applicable, the resident's legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary transfer. The facility must immediately telephone the Department when a hearing is requested. The hearing must be held within five business days of the resident's move. An informal conference may not be held prior to the hearing.

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A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met: (A) The facility was not notified prior to admission that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; (B) The facility learns that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; and (C) The resident presents a current risk of harm to another resident, staff, or visitor in the facility as evidenced by: (i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; and (ii) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

**(A)**

The facility was not notified prior to admission that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime;

**(B)**

The facility learns that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

**(C)**

The resident presents a current risk of harm to another resident, staff, or visitor in the facility as evidenced by: (i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; and (ii) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

**(i)**

Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; and

**(ii)**

Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

**(b)**

Prior to the move, the facility must contact the Department by telephone and review the criteria in subsection (a) of this section. The Department shall respond within one working day of contact by the facility. The Department of Correction's parole or probation officer must be included in the review, if available. The Department shall advise the facility if rule criteria for immediate move out are not met. The Department shall assist in locating placement options.

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The facility must issue written notice on the Department approved form. The form must be filled out in its entirety and a copy of the notice delivered in person to the resident or the resident's legal representative, if applicable. Where a resident lacks capacity and there is no legal representative, a copy of the written notice must be immediately faxed to the State Long-Term Care Ombudsman.

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Prior to the move, the facility must orally review the notice and right to object with the resident or if applicable, the resident's legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary transfer. The facility must immediately telephone the Department when a hearing is requested. The hearing must be held within five business days of the resident's move. An informal conference may not be held prior to the hearing.