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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 411-088-0080@ Informal Conference and Hearing

## **411-088-0080 Informal Conference and Hearing**

### **(1)**

A resident who is to be involuntarily transferred or refused the right of return or readmission is entitled to an informal conference and hearing as provided in this rule.

### **(2)**

CONFERENCE REQUEST. (a) Upon receipt of a notice, a resident, any designated agency, or person acting on the resident's or former resident's behalf, may request an informal conference on the form provided on the brochure, "Leaving the Nursing Facility". (A) The request for informal conference must be mailed to the Department within 10 business days of the service or delivery of the notice. The Department shall immediately notify the licensee of the request. (B) The Department may extend the time allowed for requesting an informal conference if the Department determines that good cause exists for failure to make a timely request. (C) Any facility management personnel or employee involved in providing nursing or other direct care who receives any oral or written indication of a desire for an informal conference from a resident must immediately notify the facility administrator. The administrator must immediately thereupon provide notification to the Department. (b) A resident may not be transferred after having requested an informal conference or after facility staff or the licensee has knowledge of any indication of a resident's desire for an informal conference until: (A) Disposition of

the request has been completed to the satisfaction of all parties; or (B)

Authorization for transfer is provided by a Hearings Officer pursuant to this rule.

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Upon receipt of a notice, a resident, any designated agency, or person acting on the resident's or former resident's behalf, may request an informal conference on the form provided on the brochure, "Leaving the Nursing Facility". (A) The request for informal conference must be mailed to the Department within 10 business days of the service or delivery of the notice. The Department shall immediately notify the licensee of the request. (B) The Department may extend the time allowed for requesting an informal conference if the Department determines that good cause exists for failure to make a timely request. (C) Any facility management personnel or employee involved in providing nursing or other direct care who receives any oral or written indication of a desire for an informal conference from a resident must immediately notify the facility administrator. The administrator must immediately thereupon provide notification to the Department.

**(A)**

The request for informal conference must be mailed to the Department within 10 business days of the service or delivery of the notice. The Department shall immediately notify the licensee of the request.

**(B)**

The Department may extend the time allowed for requesting an informal conference if the Department determines that good cause exists for failure to make a timely request.

**(C)**

Any facility management personnel or employee involved in providing nursing or other direct care who receives any oral or written indication of a desire for an informal conference from a resident must immediately notify the facility administrator. The administrator must

immediately thereupon provide notification to the Department.

**(b)**

A resident may not be transferred after having requested an informal conference or after facility staff or the licensee has knowledge of any indication of a resident's desire for an informal conference until: (A) Disposition of the request has been completed to the satisfaction of all parties; or (B) Authorization for transfer is provided by a Hearings Officer pursuant to this rule.

**(A)**

Disposition of the request has been completed to the satisfaction of all parties; or

**(B)**

Authorization for transfer is provided by a Hearings Officer pursuant to this rule.

**(3)**

INFORMAL CONFERENCE. (a) The Department shall hold an informal conference as promptly as reasonably possible but in no event later than 10 days after the request is received unless a later date is agreed upon by both the facility and the person or agency requesting the conference. The Department shall give telephone notice (where a telephone number is available) and send written notice of the time and place of the informal conference to the facility and all persons entitled to the notice. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, the resolution shall be reduced to writing and no formal hearing shall be held. (b) The proceedings shall be conducted at the facility where the resident is located unless an alternate site is agreed upon by both the licensee and the person or agency requesting the informal conference. (c) If at the end of an informal conference the licensee wishes to proceed with the transfer, the Department shall ask if the resident or any person or agency representing the resident wishes to request a

hearing.

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**(b)**

The proceedings shall be conducted at the facility where the resident is located unless an alternate site is agreed upon by both the licensee and the person or agency requesting the informal conference.

**(c)**

If at the end of an informal conference the licensee wishes to proceed with the transfer, the Department shall ask if the resident or any person or agency representing the resident wishes to request a hearing.

**(4)**

HEARING. (a) A hearing is conducted as a contested case in accordance with the Administrative Procedures Act, ORS Chapter 183, and the rules of the Department adopted there under. Parties to the hearing must be the resident (or former resident) and the licensee. The Hearings Officer is delegated the authority to issue the final order and shall do so. (b) If, pursuant to section (3) of this rule, the Department receives (orally or in writing) a request for a hearing, the Department

shall set the date, time, and place of the hearing as promptly as possible. Unless a later date is agreed upon by both the licensee and the person requesting the hearing, the hearing must be held no later than 30 days after the informal conference. (c) An expedited hearing must be conducted In the case of an involuntary transfer under OAR 411-088-0020(1)(f) (Termination of Nursing Facility Operations). (A) To request an expedited hearing, the resident or any agency or person designated to act on the resident's behalf must verbally request or submit a completed and signed Hearing Request form. The request for an expedited hearing must be received by the Department within 10 business days after an informal conference. (B) The Department may extend the time allowed for requesting an expedited hearing if the Department determines that good cause exists for failure to make a timely request. (C) An expedited hearing shall be conducted within 5 business days of request. The final order shall be issued within 48 hours following the hearing. (d) Nothing herein shall be construed to prohibit, at the election of the Department and with the consent of all interested parties, a hearing immediately following an informal conference. (e) The Department shall provide all persons and entities listed in OAR 411-088-0070(3) and the licensee with notification of a hearing. The hearing notification shall be served on the parties personally or by registered or certified mail. (f) At the hearing, the facility must proceed first by presentation of evidence in support of the transfer of the resident or of refusal to provide right of return or readmission of the former resident. The person requesting the hearing must follow the facility by presentation of evidence in support of their objection to the transfer or of the request of right of return or readmission. (A) In a hearing concerning right of readmission, the only questions raised shall be whether the application was timely, whether the former resident is eligible by means of payment, and whether another

person was or is entitled to the bed. (B) In a hearing concerning right of return, the only questions raised shall be whether full payment is or was available for the period of hospital stay and whether there was authority under OAR 411-088-0050(2) for another person to be given the bed. (C) In a hearing concerning involuntary transfer under OAR 411-088-0020(1)(f) as a result of termination of nursing facility operations, the only question raised shall be whether the proposed transition plan meets the requirements described in OAR 411-085-0025(2)(d). (g) The licensee has the burden of establishing that the transfer or denial of return or readmission is permitted by law. (h) The Hearings Officer shall, in determining the appropriateness and timeliness of an involuntary transfer or a refusal of return or readmission, consider factors including but not limited to the factors listed in OAR 411-088-0030. The Hearings Officer may not approve a transfer: (A) For medical or welfare reasons (under OAR 411-088-0020(1)(a) through (d)) if the risks of physical or emotional trauma significantly outweighs the risk to the resident or to other residents if no transfer were to occur; or (B) For any other reason if the transfer presents a substantial risk of morbidity or mortality to the resident. (i) CONCLUSION OF HEARING. The hearing is concluded by the issuance of findings and an order: (A) Affirming the transfer or the refusal to provide right of return or readmission; (B) Granting conditional approval of a transfer when necessary or appropriate for the welfare of the resident. Conditions may include without limitation the occurrence of any or all of the following incidents in preparation for a transfer: (i) Selecting a location for the resident to be placed consistent with the resident's need for care and as consistent as possible with the resident's ties with friends and family, if any; (ii) Soliciting and encouraging participation of the resident's friends and family in preparing the resident for transfer; (iii) Visits by the resident to the proposed site

of relocation prior to the actual transfer, accompanied by a person with whom the resident is familiar and comfortable, unless the resident is already familiar with the proposed site; (iv) Arranging at the proposed site of relocation for continuation (as much as possible) of activities and routines with which the resident has become familiar; and (v) Ensuring that the resident is afforded continuity in the arrangement of an access to personal items significant to the resident. (C) Ordering the licensee to retain the resident, readmit the former resident if the resident has been transferred, or provide the former resident with the right of return or readmission; (D) Ordering the licensee to retain the resident and establishing standards of behavior for family members or other visitors necessary for the welfare of residents; or (E) Making such further provisions as are reasonably necessary to give full force and effect to any order that a licensee retain or readmit the resident or provide the resident the right of return or readmission. (j) If the Department approves a transfer subject to one or more conditions pursuant to this rule, the transfer may not occur until the licensee has notified the person requesting the hearing and certified to the Department in writing that all of such conditions have been complied with and the Department has acknowledged to the licensee in writing the receipt and sufficiency of such certification. The Department may, upon request, allow verbal certification and give verbal acknowledgement subject to subsequent certification and acknowledgement in writing.

**(a)**

A hearing is conducted as a contested case in accordance with the Administrative Procedures Act, ORS Chapter 183, and the rules of the Department adopted there under. Parties to the hearing must be the resident (or former resident) and the licensee. The Hearings Officer is delegated the authority to issue the final order and shall do so.

**(b)**

If, pursuant to section (3) of this rule, the Department receives (orally or in writing) a request for a hearing, the Department shall set the date, time, and place of the hearing as promptly as possible. Unless a later date is agreed upon by both the licensee and the person requesting the hearing, the hearing must be held no later than 30 days after the informal conference.

**(c)**

An expedited hearing must be conducted In the case of an involuntary transfer under OAR 411-088-0020(1)(f) (Termination of Nursing Facility Operations). (A) To request an expedited hearing, the resident or any agency or person designated to act on the resident's behalf must verbally request or submit a completed and signed Hearing Request form. The request for an expedited hearing must be received by the Department within 10 business days after an informal conference. (B) The Department may extend the time allowed for requesting an expedited hearing if the Department determines that good cause exists for failure to make a timely request. (C) An expedited hearing shall be conducted within 5 business days of request. The final order shall be issued within 48 hours following the hearing.

**(A)**

To request an expedited hearing, the resident or any agency or person designated to act on the resident's behalf must verbally request or submit a completed and signed Hearing Request form. The request for an expedited hearing must be received by the Department within 10 business days after an informal conference.

**(B)**

The Department may extend the time allowed for requesting an expedited hearing if the Department determines that good cause exists for failure to make a timely request.

**(C)**



An expedited hearing shall be conducted within 5 business days of request. The final order shall be issued within 48 hours following the hearing.

**(d)**

Nothing herein shall be construed to prohibit, at the election of the Department and with the consent of all interested parties, a hearing immediately following an informal conference.

**(e)**

The Department shall provide all persons and entities listed in OAR 411-088-0070(3) and the licensee with notification of a hearing. The hearing notification shall be served on the parties personally or by registered or certified mail.

**(f)**

At the hearing, the facility must proceed first by presentation of evidence in support of the transfer of the resident or of refusal to provide right of return or readmission of the former resident. The person requesting the hearing must follow the facility by presentation of evidence in support of their objection to the transfer or of the request of right of return or readmission. (A) In a hearing concerning right of readmission, the only questions raised shall be whether the application was timely, whether the former resident is eligible by means of payment, and whether another person was or is entitled to the bed. (B) In a hearing concerning right of return, the only questions raised shall be whether full payment is or was available for the period of hospital stay and whether there was authority under OAR 411-088-0050(2) for another person to be given the bed. (C) In a hearing concerning involuntary transfer under OAR 411-088-0020(1)(f) as a result of termination of nursing facility operations, the only question raised shall be whether the proposed transition plan meets the requirements described in OAR 411-085-0025(2)(d).

**(A)**

In a hearing concerning right of readmission, the only questions raised shall be whether the application was timely, whether the former resident is eligible by means of payment, and whether another person was or is entitled to the bed.

**(B)**

In a hearing concerning right of return, the only questions raised shall be whether full payment is or was available for the period of hospital stay and whether there was authority under OAR 411-088-0050(2) for another person to be given the bed.

**(C)**

In a hearing concerning involuntary transfer under OAR 411-088-0020(1)(f) as a result of termination of nursing facility operations, the only question raised shall be whether the proposed transition plan meets the requirements described in OAR 411-085-0025(2)(d).

**(g)**

The licensee has the burden of establishing that the transfer or denial of return or readmission is permitted by law.

**(h)**

The Hearings Officer shall, in determining the appropriateness and timeliness of an involuntary transfer or a refusal of return or readmission, consider factors including but not limited to the factors listed in OAR 411-088-0030. The Hearings Officer may not approve a transfer: (A) For medical or welfare reasons (under OAR 411-088-0020(1)(a) through (d)) if the risks of physical or emotional trauma significantly outweighs the risk to the resident or to other residents if no transfer were to occur; or (B) For any other reason if the transfer presents a substantial risk of morbidity or mortality to the resident.

**(A)**

For medical or welfare reasons (under OAR 411-088-0020(1)(a) through (d)) if the risks of physical or emotional trauma significantly outweighs the risk to the resident or to other

residents if no transfer were to occur; or

**(B)**

For any other reason if the transfer presents a substantial risk of morbidity or mortality to the resident.

**(i)**

CONCLUSION OF HEARING. The hearing is concluded by the issuance of findings and an order: (A) Affirming the transfer of the refusal to provide right of return or readmission; (B) Granting conditional approval of a transfer when necessary or appropriate for the welfare of the resident. Conditions may include without limitation the occurrence of any or all of the following incidents in preparation for a transfer: (i) Selecting a location for the resident to be placed consistent with the resident's need for care and as consistent as possible with the resident's ties with friends and family, if any; (ii) Soliciting and encouraging participation of the resident's friends and family in preparing the resident for transfer; (iii) Visits by the resident to the proposed site of relocation prior to the actual transfer, accompanied by a person with whom the resident is familiar and comfortable, unless the resident is already familiar with the proposed site; (iv) Arranging at the proposed site of relocation for continuation (as much as possible) of activities and routines with which the resident has become familiar; and (v) Ensuring that the resident is afforded continuity in the arrangement of an access to personal items significant to the resident. (C) Ordering the licensee to retain the resident, readmit the former resident if the resident has been transferred, or provide the former resident with the right of return or readmission; (D) Ordering the licensee to retain the resident and establishing standards of behavior for family members or other visitors necessary for the welfare of residents; or (E) Making such further provisions as are reasonably necessary to give full force and effect to any order that a licensee retain or readmit the resident or provide the resident the right of return or readmission.

**(A)**

Affirming the transfer of the refusal to provide right of return or readmission;

**(B)**

Granting conditional approval of a transfer when necessary or appropriate for the welfare of the resident. Conditions may include without limitation the occurrence of any or all of the following incidents in preparation for a transfer: (i) Selecting a location for the resident to be placed consistent with the resident's need for care and as consistent as possible with the resident's ties with friends and family, if any; (ii) Soliciting and encouraging participation of the resident's friends and family in preparing the resident for transfer; (iii) Visits by the resident to the proposed site of relocation prior to the actual transfer, accompanied by a person with whom the resident is familiar and comfortable, unless the resident is already familiar with the proposed site; (iv) Arranging at the proposed site of relocation for continuation (as much as possible) of activities and routines with which the resident has become familiar; and (v) Ensuring that the resident is afforded continuity in the arrangement of an access to personal items significant to the resident.

**(i)**

Selecting a location for the resident to be placed consistent with the resident's need for care and as consistent as possible with the resident's ties with friends and family, if any;

**(ii)**

Soliciting and encouraging participation of the resident's friends and family in preparing the resident for transfer;

**(iii)**

Visits by the resident to the proposed site of relocation prior to the actual transfer, accompanied by a person with whom the resident is familiar and comfortable, unless the resident is already familiar with the proposed site;

**(iv)**

Arranging at the proposed site of relocation for continuation (as much as possible) of activities and routines with which the resident has become familiar; and

**(v)**

Ensuring that the resident is afforded continuity in the arrangement of an access to personal items significant to the resident.

**(C)**

Ordering the licensee to retain the resident, readmit the former resident if the resident has been transferred, or provide the former resident with the right of return or readmission;

**(D)**

Ordering the licensee to retain the resident and establishing standards of behavior for family members or other visitors necessary for the welfare of residents; or

**(E)**

Making such further provisions as are reasonably necessary to give full force and effect to any order that a licensee retain or readmit the resident or provide the resident the right of return or readmission.

**(j)**

If the Department approves a transfer subject to one or more conditions pursuant to this rule, the transfer may not occur until the licensee has notified the person requesting the hearing and certified to the Department in writing that all of such conditions have been complied with and the Department has acknowledged to the licensee in writing the receipt and sufficiency of such certification. The Department may, upon request, allow verbal certification and give verbal acknowledgement subject to subsequent certification and acknowledgement in writing.

**(5)**

EXCEPTIONS. (a) A resident who is to be involuntarily transferred or refused the right of return or readmission as a result of governmental action pursuant to OAR

411-088-0020(1)(b) or (e) is not entitled to a hearing prior to transfer. (b) A resident who is to be involuntarily transferred as a result of termination of nursing facility operations pursuant to OAR 411-088-0020(1)(f) is entitled to an informal conference and hearing regarding the resident's proposed transition plan but not regarding transfer from the facility that is terminating operations.

**(a)**

A resident who is to be involuntarily transferred or refused the right of return or readmission as a result of governmental action pursuant to OAR 411-088-0020(1)(b) or (e) is not entitled to a hearing prior to transfer.

**(b)**

A resident who is to be involuntarily transferred as a result of termination of nursing facility operations pursuant to OAR 411-088-0020(1)(f) is entitled to an informal conference and hearing regarding the resident's proposed transition plan but not regarding transfer from the facility that is terminating operations.