

411-089-0050 Conditions

(1)

Purpose. The purpose of this rule is to protect nursing facility residents and prospective residents from threats to their health, safety, and welfare, and to help ensure the attention of facilities with serious deficiencies is directed toward correcting those deficiencies.

(2)

For the purpose of these rules, the following definitions apply: (a) "Immediate Jeopardy" means a situation in which the failure of a nursing facility to comply with a rule of the Department has caused or is likely to cause serious injury, serious harm, serious impairment, or death to a resident. (b) "Substantial Compliance" means a level of compliance with state law and with rules of the Department such that any identified deficiencies pose no actual harm or no more than potential for minor harm to the health or safety of residents of a facility.

(a)

"Immediate Jeopardy" means a situation in which the failure of a nursing facility to comply with a rule of the Department has caused or is likely to cause serious injury, serious harm, serious impairment, or death to a resident.

(b)

"Substantial Compliance" means a level of compliance with state law and with rules of the Department such that any identified deficiencies pose no actual harm or no more

than potential for minor harm to the health or safety of residents of a facility.

(3)

The Department may impose a condition on the license of a nursing facility in response to a substantiated finding of rule violation, including, but not limited to a substantiated finding of abuse, or in response to a finding of immediate jeopardy, whether or not the finding of immediate jeopardy is substantiated at the time the license condition is imposed.

(4)

The Department shall immediately remove the license condition if the finding of immediate jeopardy is not substantiated within 30 calendar days after the imposition of the license condition.

(5)

Conditions may be attached to a license upon a finding that: (a) Information on the application or inspection requires a condition to protect the health and safety of residents; (b) There exists a threat to the health, safety, and welfare of a resident; (c) There is reliable evidence of abuse, neglect, or exploitation; or (d) The facility is not being operated in compliance with these rules.

(a)

Information on the application or inspection requires a condition to protect the health and safety of residents;

(b)

There exists a threat to the health, safety, and welfare of a resident;

(c)

There is reliable evidence of abuse, neglect, or exploitation; or

(d)

The facility is not being operated in compliance with these rules.

(6)

Conditions that may be imposed on a licensee include, but are not limited to: (a) Restricting the total number of residents; (b) Restricting the number and impairment level of residents based upon the capacity of the licensee and staff to meet the health and safety needs of all residents; (c) Requiring additional staff or staff qualifications; (d) Requiring additional training for staff; (e) Requiring additional documentation; or (f) Restriction on admissions, if the Department makes a finding of immediate jeopardy that is likely to present an immediate jeopardy to future residents upon admission.

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(b)

Restricting the number and impairment level of residents based upon the capacity of the licensee and staff to meet the health and safety needs of all residents;

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Requiring additional staff or staff qualifications;

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Requiring additional training for staff;

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Requiring additional documentation; or

(f)

Restriction on admissions, if the Department makes a finding of immediate jeopardy that is likely to present an immediate jeopardy to future residents upon admission.

(7)

NOTICE OF IMPENDING IMPOSITION OF LICENSE CONDITION.(a) Except where the threat to residents is so imminent the Department determines it is not safe or

practical to give the facility advance notice, the Department shall provide the licensee with a Notice of Impending Imposition of License Condition (Notice) at least 48 hours prior to issuing an Order Imposing License Condition (Order). The Notice may be provided in writing, sent by certified or registered mail to the licensee, or provided orally in person or by telephone to the licensee or to the person represented by facility staff to be in charge at the facility. When the Notice is delivered orally, the Department must subsequently provide written notice to the licensee by registered or certified mail. The Notice must: (A) Describe the acts or omissions of the licensee that support the imposition of the license condition and the circumstances that led to the substantiated finding of a rule violation, including, but not limited to: (i) A substantiated finding of abuse. (ii) A finding of immediate jeopardy. (B) Describe why the acts or omissions and the circumstances create a situation for which the imposition of a license condition is warranted. (C) Provide a brief statement identifying the nature of the impending condition. (D) Provide a brief statement describing how the license condition is designed to remediate the circumstances that lead to the license condition. (E) Provide a brief statement of the requirements for withdrawal of the license condition. (F) Identify a person at the Department whom the licensee may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order. (G) Specify the date and time an informal conference will be held, if requested by the licensee. (H) Specify the date and time the Order will take effect. (b) If the threat to residents of a facility is so imminent the Department determines it is not safe or practical to give the facility advance notice of a license condition, the Department must provide the notice required under section (7)(a) within 48 hours after issuing an order imposing the license condition.

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(A)

Describe the acts or omissions of the licensee that support the imposition of the license condition and the circumstances that led to the substantiated finding of a rule violation, including, but not limited to: (i) A substantiated finding of abuse. (ii) A finding of immediate jeopardy.

(i)

A substantiated finding of abuse.

(ii)

A finding of immediate jeopardy.

(B)

Describe why the acts or omissions and the circumstances create a situation for which the imposition of a license condition is warranted.

(C)

Provide a brief statement identifying the nature of the impending condition.

(D)

Provide a brief statement describing how the license condition is designed to remediate the circumstances that lead to the license condition.

(E)

Provide a brief statement of the requirements for withdrawal of the license condition.

(F)

Identify a person at the Department whom the licensee may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order.

(G)

Specify the date and time an informal conference will be held, if requested by the licensee.

(H)

Specify the date and time the Order will take effect.

(b)

If the threat to residents of a facility is so imminent the Department determines it is not safe or practical to give the facility advance notice of a license condition, the Department must provide the notice required under section (7)(a) within 48 hours after issuing an order imposing the license condition.

(8)

INFORMAL CONFERENCE. If an informal conference is requested, the conference will be held at a location designated by the Department. If determined to be appropriate by the Department, the conference may be held by telephone. (a) With Notice. If a Notice of Impending License Condition is issued, the licensee must be provided with an opportunity for an informal conference to object to the Department's proposed action before the license condition is scheduled to take effect. The Order Imposing License Condition may be issued at any time after the informal conference. (b) Without Notice. If an Order Imposing License Condition is issued without a prior Notice of Impending License Condition, the licensee may request an immediate informal conference to object to the Department's action.

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(b)

Without Notice. If an Order Imposing License Condition is issued without a prior Notice of Impending License Condition, the licensee may request an immediate informal conference to object to the Department's action.

(9)

ORDER IMPOSING LICENSE CONDITION. (a) When an Order Imposing License Condition (Order) is issued, the Department must serve the Order to the licensee either personally or by registered or certified mail. (b) The Order must include the following statements: (A) The authority under which the condition is being issued. (B) A reference to the specific sections of the statute and administrative rules

involved. (C) The effective date of the condition. (D) A short and plain statement of the matters asserted or charged. (E) The specific terms of the license condition. (F) A specific description of how the scope and manner of the license condition is designed to remediate the circumstances that lead to the license condition. (G) A specific description of the requirements for withdrawal of the license condition. (H) Statement of the licensee's right to request a hearing. (I) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee must notify the Department. (J) That, if a request for hearing is not received by the Department within 21 calendar days from the date of the Order, the licensee has waived the right to a hearing under ORS chapter 183. (K) Findings of specific acts or omissions of the licensee that are grounds for the license condition, and the reasons these acts or omissions create a situation for which the imposition of a license condition is warranted. (L) That the Department may combine the hearing on the Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.

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The Order must include the following statements: (A) The authority under which the condition is being issued. (B) A reference to the specific sections of the statute and administrative rules involved. (C) The effective date of the condition. (D) A short and plain statement of the matters asserted or charged. (E) The specific terms of the license condition. (F) A specific description of how the scope and manner of the license

condition is designed to remediate the circumstances that lead to the license condition.

(G) A specific description of the requirements for withdrawal of the license condition. (H) Statement of the licensee's right to request a hearing. (I) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee must notify the Department. (J) That, if a request for hearing is not received by the Department within 21 calendar days from the date of the Order, the licensee has waived the right to a hearing under ORS chapter 183. (K) Findings of specific acts or omissions of the licensee that are grounds for the license condition, and the reasons these acts or omissions create a situation for which the imposition of a license condition is warranted.

(L) That the Department may combine the hearing on the Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.

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The specific terms of the license condition.

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A specific description of how the scope and manner of the license condition is designed to remediate the circumstances that lead to the license condition.

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A specific description of the requirements for withdrawal of the license condition.

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Statement of the licensee's right to request a hearing.

(I)

That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee must notify the Department.

(J)

That, if a request for hearing is not received by the Department within 21 calendar days from the date of the Order, the licensee has waived the right to a hearing under ORS chapter 183.

(K)

Findings of specific acts or omissions of the licensee that are grounds for the license condition, and the reasons these acts or omissions create a situation for which the imposition of a license condition is warranted.

(L)

That the Department may combine the hearing on the Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.

(10)

Posting of Admission Restriction Order. A licensee who has been ordered to restrict admissions to a facility shall immediately post a "Restriction of Admissions Notice" on both the inside and outside faces of each door of the facility through which any person may enter or exit the facility. Such public notices shall be provided by the Department. The notices shall not be removed, altered, or obscured until the restriction has been lifted by the Department. Removal of the notice without the

Department's authorization is a Class C misdemeanor.

(11)

HEARING. (a) Right to Hearing. If the Department imposes an Order, the licensee is entitled to a contested case hearing pursuant to ORS chapter 183. (b) Hearing Request. The Department must receive the licensee's request for a hearing within 21 calendar days of the date of the Order. If a request for hearing is not received by the Department within 21 calendar days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183. (c) A licensee's request for a hearing does not delay enforcement. (d) Date of Hearing. When a timely request for hearing is received, the hearing shall be held as soon as practical. (e) Consolidation. If a request for hearing is received on an Order, and a subsequent Order is issued, the Department may consolidate the Orders into a single contested case hearing. (f) At the hearing, the Department shall consider the facts and the circumstances including, but not limited to: (A) Whether at the time of the issuance of the restriction there was probable cause from evidence available to the Department to believe there were grounds for the Admission Restriction Order; (B) Whether the acts or omissions of the licensee posed an immediate threat to resident health and safety; (C) Whether changed circumstances, including implementation of effective systems to help ensure deficiencies causing the restriction do not recur, eliminate the need for continuing the restriction; and (D) Whether the agency followed the appropriate procedures in issuing the restriction.

(a)

Right to Hearing. If the Department imposes an Order, the licensee is entitled to a contested case hearing pursuant to ORS chapter 183.

(b)

Hearing Request. The Department must receive the licensee's request for a hearing within 21 calendar days of the date of the Order. If a request for hearing is not received by the Department within 21 calendar days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183.

(c)

A licensee's request for a hearing does not delay enforcement.

(d)

Date of Hearing. When a timely request for hearing is received, the hearing shall be held as soon as practical.

(e)

Consolidation. If a request for hearing is received on an Order, and a subsequent Order is issued, the Department may consolidate the Orders into a single contested case hearing.

(f)

At the hearing, the Department shall consider the facts and the circumstances including, but not limited to: (A) Whether at the time of the issuance of the restriction there was probable cause from evidence available to the Department to believe there were grounds for the Admission Restriction Order; (B) Whether the acts or omissions of the licensee posed an immediate threat to resident health and safety; (C) Whether changed circumstances, including implementation of effective systems to help ensure deficiencies causing the restriction do not recur, eliminate the need for continuing the restriction; and (D) Whether the agency followed the appropriate procedures in issuing the restriction.

(A)

Whether at the time of the issuance of the restriction there was probable cause from evidence available to the Department to believe there were grounds for the Admission Restriction

Order;

(B)

Whether the acts or omissions of the licensee posed an immediate threat to resident health and safety;

(C)

Whether changed circumstances, including implementation of effective systems to help ensure deficiencies causing the restriction do not recur, eliminate the need for continuing the restriction; and

(D)

Whether the agency followed the appropriate procedures in issuing the restriction.

(12)

REQUEST FOR REINSPECTION OR REEVALUATION.(a) Assertion of substantial compliance: Following the Order Imposing License Condition (Order) on a facility, the Department shall: (A) Within 15 business days of receiving the facility's written assertion of substantial compliance and request for reinspection, the Department shall reinspect or reevaluate the facility to determine if the facility has achieved substantial compliance. (B) Notify the facility by telephone or electronic means of the findings of the reinspection or reevaluation within five business days after completion of the reinspection or reevaluation. (C) Issue a written report to the facility within 30 business days after the reinspection or reevaluation notifying the facility of the Department's determinations. (b) If the Department finds the facility has achieved substantial compliance and that systems are in place to ensure similar deficiencies do not reoccur, the Department shall withdraw the Order. (c) If after reinspection or reevaluation, the Department determines the violation continues to exist, the Department may not withdraw the Order and is not obligated to reinspect or reevaluate the facility again for at least 45 business days

after the first reinspection or reevaluation. (A) The Department shall provide the facility notice of the decision not to withdraw the Order in writing. (B) The notice shall inform the facility of the right to a contested case hearing pursuant to ORS chapter 183. (d) If the Department does not meet the requirements of this section, a license condition is automatically removed on the date the Department failed to meet the requirements of this section, unless the Director extends the applicable period for no more than 15 business days. The Director may not delegate the power to make a determination regarding an extension under this paragraph. (e) Nothing in this section limits the Department's authority to visit or inspect the facility at any time.

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(A)

Within 15 business days of receiving the facility's written assertion of substantial compliance and request for reinspection, the Department shall reinspect or reevaluate the facility to determine if the facility has achieved substantial compliance.

(B)

Notify the facility by telephone or electronic means of the findings of the reinspection or

reevaluation within five business days after completion of the reinspection or reevaluation.

(C)

Issue a written report to the facility within 30 business days after the reinspection or reevaluation notifying the facility of the Department's determinations.

(b)

If the Department finds the facility has achieved substantial compliance and that systems are in place to ensure similar deficiencies do not reoccur, the Department shall withdraw the Order.

(c)

If after reinspection or reevaluation, the Department determines the violation continues to exist, the Department may not withdraw the Order and is not obligated to reinspect or reevaluate the facility again for at least 45 business days after the first reinspection or reevaluation. (A) The Department shall provide the facility notice of the decision not to withdraw the Order in writing. (B) The notice shall inform the facility of the right to a contested case hearing pursuant to ORS chapter 183.

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The Department shall provide the facility notice of the decision not to withdraw the Order in writing.

(B)

The notice shall inform the facility of the right to a contested case hearing pursuant to ORS chapter 183.

(d)

If the Department does not meet the requirements of this section, a license condition is automatically removed on the date the Department failed to meet the requirements of this section, unless the Director extends the applicable period for no more than 15 business days. The Director may not delegate the power to make a determination

regarding an extension under this paragraph.

(e)

Nothing in this section limits the Department's authority to visit or inspect the facility at any time.

(13)

Exceptions to Admission Restriction Order. While an Admission Restriction Order is in place, the Department, in its sole discretion, may authorize the facility to admit former residents with a right of return or right of readmission. The Department, in its sole discretion, may also authorize the facility to admit new residents for whom the Department determines that alternate placement is not feasible.