DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 069

LONG TERM CARE ASSESSMENT

Table of Contents

411-069-0000 Definitions 1

411-069-0010 General Administration 3

411-069-0020 Disclosure of Information 3

411-069-0030 Entities Subject to the Long Term Care Facility Assessment 4

411-069-0040 Long Term Care Facility Assessment: Calculation, Report, Due Date 5

411-069-0050 Filing an Amended Report 7

411-069-0060 Determining the Date Filed 8

411-069-0070 Assessment on Failure to File 9

411-069-0080 Consequence of Failure to File a Report or Failure to Pay Assessment When Due 9

411-069-0090 Departmental Authority to Audit Records 11

411-069-0100 Notice of Proposed Action 11

411-069-0110 Required Notice 13

411-069-0120 Hearing Process 13

411-069-0130 Final Order of Payment 14
411-069-0140 Remedies Available after Final Order of Payment..... 14

411-069-0150 Calculation of Long Term Care Facility Assessment.... 15

411-069-0160 Limitations on the Imposition of the Long Term Care Facility Assessment 15

411-069-0170 Sunset Provision 16

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411-069-0000 Definitions

(Amended 4/1/2014)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 069:

(1) "Assessment Rate" means the rate established by the Director of the Department of Human Services.

(2) "Assessment Year" means a 12-month period, beginning July 1 and ending the following June 30, for which the assessment rate being determined, is to apply.

(3) "Deficiency" means the amount by which the assessment as correctly computed exceeds the assessment, if any, reported by the facility. If, after the original deficiency has been assessed, subsequent information shows the correct amount of assessment to be greater than previously determined, an additional deficiency arises.

(4) "Delinquency" means the facility failed to pay the assessment as correctly computed when the assessment was due.

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

(6) "Director" means the Director of the Department of Human Services.

(7) "Gross Revenue" means the revenue paid to a long term care facility for patient care, room, board, and services, less contractual adjustments. It does not include:

(a) Revenue derived from sources other than long term care facility operations, including but not limited to donations, interest, guest meals, or any other revenue not attributable to patient care; and

(b) Hospital revenue derived from hospital operations.

(8) "Long Term Care Facility" means a facility with permanent facilities that includes inpatient beds and provides medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director. A long term care facility provides treatment for two or more unrelated patients and includes licensed skilled nursing facilities and licensed intermediate care facilities, but does not include facilities licensed and operated pursuant to ORS 443.400 to 443.455. A long term care facility does not include any intermediate care facility for the mentally retarded.

(9) "Medicaid Patient Days" means patient days attributable to patients who receive medical assistance under a plan described in 42 U.S.C. 1396.

(10) "Patient Days" means the total number of patients occupying beds in a long term care facility for all days in the calendar period for which an assessment is being reported and paid. For purposes of this subsection, if a long term care facility patient is admitted and discharged on the same day, the patient shall be deemed to occupy a bed for one day.

(11) "Waivered Long Term Care Facility" means:

(a) A long term care facility operated by a Continuing Care Retirement Community (CCRC) that is registered under ORS 101.030 and that admits:

(A) Residents of the CCRC; or

(B) Residents of the CCRC and nonresidents; or

(b) A long term care facility that is annually identified by the Department as having a Medicaid recipient census that exceeds the census level established by the Department for the year for which the facility is identified.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0010 General Administration

(Amended 4/1/2014)

(1) The purpose of these rules is to implement the long term care facility assessment imposed on long term care facilities in Oregon.

(2) The Department shall administer, enforce, and collect the long term care facility assessment.

(3) The Department may assign employees, auditors, and other agents as designated by the Director to assist in the administration, enforcement, and collection of the assessments.

(4) The Department may establish rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce, and collect the assessments.

(5) The Department may prescribe forms and reporting requirements and change the forms and reporting requirements, as necessary, to administer, enforce, and collect the assessments.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0020 Disclosure of Information

(Amended 4/1/2014)

(1) Except as otherwise provided by law, the Department may not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the assessments. Particulars include but are not limited to social security numbers, employer numbers, or other facility identification numbers, and any business records required to be submitted to or inspected by the Department or its designee to allow it to determine the amounts of any assessments, delinquencies, deficiencies, penalties, or interest payable or paid, or otherwise administer, enforce, or collect a health care assessment

to the extent that such information shall be exempt from disclosure under ORS 192.501(5).

(2) The Department may:

(a) Furnish any facility, or its authorized representative, upon request of the facility or representative, with a copy of the facility's report filed with the Department for any quarter, or with a copy of any report filed by the facility in connection with the report, or with a copy with any other information the Department considers necessary;

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return; and

(c) Disclose and give access to an officer or employee of the Department or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and other employees of the state or federal government to the extent the Department deems disclosure or access necessary or appropriate for the performance of official duties in the Department's administration, enforcement, or collection of these assessments.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.225, 409.230, 410.140, 410.150, 411.300, 411.320

411-069-0030 Entities Subject to the Long Term Care Facility Assessment

(Amended 4/1/2014)

(1) Each long term care facility in Oregon is subject to the long term care facility assessment except the home and long term care facilities operated by the Oregon Department of Veterans' Affairs that receive written notice from the Department that they are exempt under the terms of a waiver. For these facilities, the exemption from the long term care facility assessment

only applies for the specific period of time described in the notice from the Department.

(2) The Director shall determine on or before April 1 of each year those long term care facilities that meet the criteria of a waivered long term care facility as defined by OAR 411-069-0000 that are exempt from the long term care facility assessment for the assessment year commencing July 1 of that year.

(3) A long term care facility that believes it meets the criteria of a waivered long term care facility that has not received notice of exempt status or disagrees with the Department's decision, may request an administrative review from the Department.

> (a) A request for an administrative review must be sent to: Administrator DHS Budget and Policy Analysis 500 Summer Street NE Salem, OR 97301.
>
> (b) A request for administrative review must be received by the Department by April 15 prior to the assessment year.

(4) Effective January 1, 2014, each long term care facility in Oregon is subject to the long term care facility assessment, except nursing facilities operated by the Oregon Department of Veterans' Affairs. A waivered long term care facility as defined in OAR 411-069-0000(11) is no longer exempt from the long term care facility assessment.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736, OL 2013 chapter 608

411-069-0040 Long Term Care Facility Assessment: Calculation, Report, Due Date

(Amended 4/1/2014)

(1) The assessment is assessed upon each patient day, including Medicaid patient day, at a long term care facility. The amount of the assessment equals the assessment rate times the number of patient days, including Medicaid patient days, at the long term care facility for the calendar quarter.

The current rate of the assessment shall be determined in accordance with these rules.

(2) The facility must pay the assessment and file the report on a form approved by the Department on or before the last day of the month following the end of the calendar quarter for which the assessment is being reported, unless the Department permits a later payment date. If a facility requests an extension, the Department, in its sole discretion, shall determine whether to grant an extension.

(3) Each long term care facility must submit a revenue report on a form prescribed by the Department by September 30 of each year and pay any assessment amount due. Long term care facilities with a Medicaid contract with the Department that provide more than 1,000 Medicaid patient days must submit the nursing facility financial statement (cost report) annually as required by OAR 411-070-0300 which contains the revenue report. Long term care facilities that are not required to submit the annual cost report must submit the revenue report. Either a revenue report or a nursing facility financial statement, where applicable, must be filed by October 31 of each year regardless of whether any additional assessment is owed as a result of that filing.

(4) Revenue reports submitted late are subject to penalty as set forth in OAR 411-069-0080. Nursing facility financial statements submitted late are subject to a penalty as set forth in OAR 411-070-0300, where applicable.

(5) Any assessment amount due based on the cost report or revenue report as a reconciliation of the previously filed quarterly reports must be paid by the due date specified. Payments submitted late are subject to penalty as set forth in OAR 411-069-0080.

(6) Any refund due to the provider based on the cost report or revenue report may be requested in writing with the submission of the report.

(7) Any report, statement, or other document required to be filed under any provision of these rules shall be certified by the chief financial officer of the facility or an individual with delegated authority to sign for the facility's chief financial officer. The certification must attest, based on best knowledge, information, and belief, to the accuracy, completeness, and truthfulness of the document.

(8) Payments may be made electronically and the accompanying report may either be faxed to the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form.

(9) The Department may charge the facility a fee of $100 if, for any reason, the check, draft, order, or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the assessments that may also be due.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0050 Filing an Amended Report

(Amended 4/1/2014)

(1) Claims for refunds or payments for additional assessment must be submitted by the facility on a form approved by the Department. The facility must provide all information required on the report. The Department may audit the facility, request additional information, or request an informal conference prior to granting a refund or as part of its review of a payment of a deficiency.

(2) Claim for refund.

> (a) If the amount of the assessment due is less than the amount paid by the facility and the facility does not then owe an assessment for any other calendar period, the overpayment may be refunded by the Department to the facility. The facility may request a refund by amending their quarterly report and submitting a written request for refund to the Department, or the facility may request a refund when filing their nursing facility financial statement or revenue report.
>
> (b) If there is an amount due from the facility for any past due assessments or penalties, the refund otherwise allowable shall be applied to the unpaid assessments and penalties and the facility so notified.

(3) Payment of deficiency.

(a) If the amount of the assessment is more than the amount paid by the facility, the facility may file a corrected report on a form approved by the Department and pay the deficiency at any time. The penalty under OAR 411-069-0080 shall stop accruing after the Department receives payment of the total deficiency for the calendar quarter; and

(b) If there is an error in the determination of the assessment due, the facility may describe the circumstances of the late additional payment with the late filing of the amended report. The Department, at its sole discretion, may determine that a late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the Department shall consider the circumstances, including but not limited to nature and extent of error, facility explanation of the error, evidence of prior errors, and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the facility has filed a timely original return and paid the assessment identified in the return.

(4) If the Department discovers or identifies information in the administration of these assessment rules that it determines may give rise to the issuance of a notice of proposed action or the issuance of a refund, the Department shall issue notification pursuant to OAR 411-069-0100.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0060 Determining the Date Filed

(Amended 4/1/2014)

For the purpose of these rules, any reports, requests, appeals, payments, or other response by the facility must be either received by the Department before the close of business on the date due, or if mailed, postmarked before midnight of the due date. When the due date falls on a Saturday, Sunday, or legal holiday, the return is due on the next business day following the Saturday, Sunday, or legal holiday.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0070 Assessment on Failure to File

(Amended 4/1/2014)

In the case of a failure by the facility to file a report or to maintain necessary and adequate records, the Department shall determine the assessment liability of the facility according to the best of its information and belief. Best of its information and belief means the Department shall use evidence on which a reasonable person may rely in determining the assessment, including but not limited to estimating the days of patient days based upon the number of licensed beds in the facility. The Department's determination of assessment liability shall be the basis for the assessment due in a notice of proposed action.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0080 Consequence of Failure to File a Report or Failure to Pay Assessment When Due

(Amended 4/1/2014)

(1) A long term care facility that fails to file a quarterly report or pay a quarterly assessment when due under OAR 411-069-0040 is subject to a penalty of $500 per day of delinquency. The penalty accrues from the date of deficiency, notwithstanding the date of any notice under these rules.

(2) A long term care facility that is exempt from paying provider assessments is not required to file a quarterly report, but is required to file an annual cost or revenue report. Even if exempt, a long term care facility that fails to file annual cost or revenue reports when due under OAR 411-069-0040 is subject to a penalty of up to $500 per day of delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(3) A long term care facility that fails to file an annual cost report or revenue report when due under OAR 411-069-0040 is subject to a penalty of up to $500 per day of delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(4) A long term care facility that files a cost report or annual revenue report, but fails to pay a fiscal year reconciliation assessment payment when due

under OAR 411-069-0040 is subject to a penalty of up to $500 per day of delinquency up to a maximum of five percent of the amount due. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(5) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which the penalty is being imposed.

(6) Penalties imposed under this section shall be collected by the Department and deposited in the Department's account established under ORS 409.060.

(7) Penalties paid under this section are in addition to the long term care facility assessment.

(8) If the Department determines that a facility is subject to a penalty under this section, the Department shall issue a notice of proposed action as described in OAR 411-069-0100.

(9) If a facility requests a contested case hearing pursuant to OAR 411-069-0120, the Director, at the Director's sole discretion, may waive or reduce the amount of penalty assessed.

(10) If a facility fails to report or pay the provider assessment after the Department issues a final order described in OAR 411-069-0130, then the Department shall pursue remedies described in OAR 411-069-0140 that may include:

(a) A final order leading to collection activities;

(b) Nursing facility license denial, suspension, or revocation;

(c) Admission restrictions; or

(d) Terminating provider contracts.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0090 Departmental Authority to Audit Records

(Amended 4/1/2014)

(1) The facility must maintain clinical and financial records sufficient to determine the actual number of patient days for any calendar period for which an assessment may be due.

(2) The Department or its designee may audit the facility's records at any time for a period of three years following the date the assessment is due to verify or determine the number of patient days at the facility.

(3) The Department may issue a notice of proposed action or issue a refund based upon its findings during the audit.

(4) Any audit, finding, or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the facility or by the facility and a representative of the Department.

(5) The Department may issue a refund and otherwise take such actions as it deems appropriate based upon the audit findings.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0100 Notice of Proposed Action

(Amended 4/1/2014)

(1) Prior to issuing a notice of proposed action, the Department shall notify the facility of a potential deficiency or failure to report that may give rise to the imposition of a penalty. The Department shall issue a 30 day notification letter within 30 calendar days of the report or payment due date. The facility shall have 30 calendar days from the date of the notice to respond to the notification. The Department may consider the response, if any, and any amended report under OAR 411-069-0050 in its notice of proposed action. In all cases that the Department has determined that a facility has a deficiency or failure to report, the Department shall issue a notice of proposed action. The Department does not issue a notice of proposed action if the issue is resolved satisfactorily within 59 days from the date of mailing the 30 day notification letter.

(2) The Department shall issue a notice of proposed action within 60 calendar days from the date of mailing the 30 day notification letter.

(3) Contents of the notice of proposed action must include:

(a) The applicable calendar quarter;

(b) The basis for determining the corrected amount of assessment for the quarter;

(c) The corrected assessment due for the quarter as determined by the Department;

(d) The amount of assessment paid for the quarter by the facility;

(e) The resulting deficiency, which is the difference between the amount received by the Department for the calendar quarter and the corrected amount due as determined by the Department;

(f) Statutory basis for the penalty;

(g) Amount of penalty per day of delinquency;

(h) Date upon which the penalty began to accrue;

(i) Date the penalty stopped accruing or circumstances under which the penalty shall stop accruing;

(j) The total penalty accrued up to the date of the notice;

(k) Instructions for responding to the notice; and

(l) A statement of the facility's right to a hearing.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0110 Required Notice

(Amended 4/1/2014)

(1) Any notice required to be sent to the facility shall be sent to the current licensee and any former licensee who was occupying the property during the time period to which the notice relates.

(2) Any notice required to be sent from the facility to the Department under these rules shall be sent to the point of contact identified on the communication from the Department to the facility.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0120 Hearing Process

(Amended 4/1/2014)

(1) Any facility that receives a notice of proposed action may request a contested case hearing as provided under ORS chapter 183.

(2) The written request must be received by the Department within 20 days of the date of the notice.

(3) Prior to the hearing, the facility shall meet with the Department for an informal conference.

> (a) The informal conference may be used to negotiate a written settlement agreement.
>
> (b) If the settlement agreement includes a reduction or waiver of penalties, the agreement must be approved and signed by the Director.

(4) Nothing in this section shall preclude the Department and the facility from agreeing to an informal disposition of the contested case at any time, consistent with ORS 183.417.

(5) If the case proceeds to a hearing, the administrative law judge shall issue a proposed order with respect to the notice of proposed action.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0130 Final Order of Payment

(Amended 4/1/2014)

The Department shall issue a final order of payment for deficiencies and/or penalties when:

(1) Any part of the deficiency or penalty is upheld after a hearing;

(2) The facility did not make a timely request for a hearing; or

(3) Upon the stipulation of the facility and the Department.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0140 Remedies Available after Final Order of Payment

(Amended 4/1/2014)

(1) Any amounts due and owing under the final order of payment and any interest thereon may be recovered by Oregon as a debt to the state, using any available legal and equitable remedies. These remedies include, but are not limited to:

> (a) Collection activities including but not limited to deducting the amount of the final deficiency and penalty from any sum then or later owed to the facility or its owners or operators by the Department, CMS, or their designees to the extent allowed by law;
>
> (b) Nursing facility license denial, suspension, or revocation under OAR 411-089-0040;
>
> (c) Restrictions of admissions to the facility under OAR 411-089-0050; and
>
> (d) Terminating the provider contract with the owners or operators of the facility under OAR 411-070-0015.

(2) Every payment obligation shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the final order of payment and continuing until the payment obligation, including interest, has been discharged.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0150 Calculation of Long Term Care Facility Assessment
(Amended 4/1/2014)

(1) The amount of the assessment is based on the assessment rate determined by the Director multiplied by the number of patient days at the long term care facility for a calendar quarter.

(2) The Director shall establish an annual assessment rate for long term care facilities that applies for each 12-month period beginning July 1. The Director shall establish the assessment rate on or before June 15 preceding the 12-month period for which the rate applies.

(3) On or before October 31, the Department shall refund any overages from the prior fiscal year. For example, by October 31, 2013, the Department shall refund any overages from fiscal year 2012. Overages are defined as any amount of provider assessment that exceeds the federal maximum provider assessment limit in effect for the fiscal year.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0160 Limitations on the Imposition of the Long Term Care Facility Assessment
(Amended 4/1/2014)

The long term care facility assessment may be imposed only in a calendar quarter for which the long term care facility reimbursement rate that is part of the Oregon Medicaid reimbursement system was calculated according to the methodology described in Oregon Laws 2003, chapter 736, section 24.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736

411-069-0170 Sunset Provision
(Amended 4/1/2014)

The long term care assessment applies to long term care facility gross revenue received on or after June 2003 and before July 1, 2020.

Stat. Auth.: ORS 409.050, 410.070, 411.060
Stats. Implemented: ORS 409.750, OL 2003 Chp. 736, OL 2013 chapter 608