

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Aging and People with Disabilities 411

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Agency and Division		Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	500 Summer Street NE, E-48 Salem, OR 97301-1074	(503) 945-6398
Rules Coordinator	Address	Telephone

**RULE CAPTION**

**Nursing Assistant Training and Competency Evaluation Program (NATCEP)**

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

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February 18, 2016	9:00 a.m.	Human Services Building 500 Summer Street NE, ROOM 160 Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
	<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>		

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

411-070-0470, 411-089-0030

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.:** ORS 410.070, 441.615, 441.637, 441.710, 441.715, 441.990

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**Other Auth.:**

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**Stats. Implemented:** ORS 410.070, 441.055, 441.615, 441.637, 441.715, 441.990

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## RULE SUMMARY

The Department of Human Services (Department) is proposing to amend the rules for nursing facilities in OAR 411-070-0470 and OAR 411-089-0030 to make changes that will become effective April 1, 2016 related to the Nursing Assistant Training and Competency Evaluation Program (NATCEP). The changes will:

- Improve the description of reimbursable fees and costs for both Medicaid facilities and individuals.
- Remove redundant rule language.
- Strengthen facility requirements to inform new hire CNAs of the reimbursement program.
- Ensure a more reasonable timeline for the CNA's reimbursement by changing the timeframe from 12 months to 3 months.
- Expand the Department's authority by establishing a tracking and enforcement process. Changes to OAR 411-089 will allow for the enforcement of OAR 411-070-0470.

The Department will also remove redundant rule language, update the rules to match current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to [Kimberly.Colkitt-Hallman@state.or.us](mailto:Kimberly.Colkitt-Hallman@state.or.us) or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

**February 23, 2016 at 5 p.m.**

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities

12/23/2015

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Signature

Date

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Aging and People with Disabilities

411

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Agency and Division

Administrative Rules Chapter Number

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**Nursing Assistant Training and Competency Evaluation Program (NATCEP)**

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: **The amendment of OAR 411-070-0470 and 411-080-0030 relating to nursing facilities.**

Statutory Authority: **ORS 410.070, 441.615, 441.637, 441.710, 441.715, 441.990**

Other Authority:

Stats. Implemented: **ORS 410.070, 441.055, 441.615, 441.637, 441.715, 441.990**

Need for the Rule(s):

The Nursing Assistant Training and Competency Evaluation Program is a federally mandated program with a goal to development of a qualified workforce of Certified Nursing Assistants in nursing facilities. Each State must provide for the reimbursement of costs to the trainee incurred upon successful completion of the training program and competency examination which is addressed in OAR 411-070-0470.

The Department of Human Services (Department) needs to amend OAR 411-070-0470 based on comments and suggestions that indicated the need for:

- More accountability in the rules, including more comprehensive rules to ensure accuracy of reimbursement
- Clarification on types of fees eligible for reimbursement.
- Clarification on timeframe for reimbursement to CNA.
- Development of a method for tracking.
- Enforcement for non-compliance.

The Department will do this by developing a tracking and reporting process that will help inform the Department of the utilization of the program. The proposed rules also improve the Department's authority to assess and impose sanctions for rule violations and ensure appropriate reimbursement by:

- Establishing Department authority and criteria for enforcement and sanctions for non-compliance.

- Improving the description of reimbursable fees and training costs for CNAs and Medicaid facilities.
- Strengthening the requirements around facility responsibility to inform and reimburse the CNA for training cost at time of hire.
- Changing the amount of time the facility has to reimburse the CNA, reducing the amount of time from the current 12 months to a more reasonable 3 months.
- Removing redundant rule language.

Documents Relied Upon, and where they are available:

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR 411-070, 089 will have the following fiscal and economic impact:

State Agencies: The Department estimates there will be no fiscal or economic impact on state agencies.

Units of Local Government: The Department estimates there will be no fiscal or economic impact on units of local government.

Consumers: The Department estimates there will be no fiscal or economic impact on consumers.

Providers: The Department estimates there will be no fiscal or economic impact on providers.

Public: The Department estimates there will be no fiscal or economic impact on the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

There are currently 139 licensed nursing facilities. Of these, 18 of these Nursing Facilities (less than 50 licensed beds) may be considered a small business as defined by ORS 183.310.

Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed changes impact nursing facilities as described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The proposed changes impact nursing facilities as described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from Oregon Health Care Association, Leading Age Oregon, Oregon Association of Area, Agencies on Aging & Disabilities, Long Term Care Ombudsman, SEIU, Governor's Commission on Senior Services, Oregon Disabilities Commission and Oregon Board of Nursing.

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities

12/23/2015

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Signature

Date

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

**CHAPTER 411  
DIVISION 70**

**NURSING FACILITIES/MEDICAID – GENERALLY AND  
REIMBURSEMENT**

**Nursing Facilities/Medicaid – Generally**

**411-070-0470 Nursing Assistant Training and Competency Evaluation Programs Request for Reimbursement**

(1) The Omnibus Budget Reconciliation Act (OBRA) of 1987 and 1990 requires that any nursing assistant employed in a nursing facility completes a competency evaluation program. Medicaid reimburses a Medicaid certified nursing facility for the Medicaid share of the allowable cost directly related to meeting the nursing assistant training and competency evaluation requirement.

(2) A facility must notify, in writing, the nursing assistants upon hire that the nursing assistant may receive reimbursement up to 12 months after completing a Nursing Assistant Training and Competency Evaluation Program (NATCEP) training program. Failure to notify or failure to reimburse an eligible nursing assistant, shall result in an assessment for imposition of sanctions.

(3) The nursing facility must reimburse newly employed Certified Nursing Assistants who have personally paid for NATCEP costs. The facility is not required to reimburse the nursing assistant in cases where the expenses were paid by an employer or education training program or reimbursed by a previous employer.

**(14) REQUEST FOR REIMBURSEMENT.** Medicaid certified nursing facilities must file a ~~Nursing Assistant Training and Competency Evaluation Program (NATCEP)~~ NATCEP request for reimbursement with the Department of Human Services ~~(the Department)~~ that meets the following standards:

(a) As of January 1, 2013, all requests for reimbursement must be submitted electronically. A facility must submit a request for reimbursement within 12 months after completing a NATCEP training program or reimbursing a nursing assistant as described in section (3) of this rule. The request for reimbursement must identify all costs incurred and related revenues (not including NATCEP payments from the Department) received during the reporting period.

(b) A request for reimbursement must:

(A) Be submitted electronically on a system provided by the Department.

(B) Include actual costs incurred and paid by the facility. The Department may not reimburse a facility prospectively.

(C) Include all revenue (not including NATCEP payments from the Department) received by the facility for conducting the approved nursing assistant training. All revenue must be used to offset the costs incurred and paid in the reporting period.

(D) The facility must maintain and have available for review the appropriate documentation, as described in section (48) of this rule, to support each specific area identified for payment by the Department. Failure to provide required documentation, when requested, shall result in an overpayment to the facility. The facility must repay any overpayment to the Department within 60 days of receipt of notification.

(E) Include all appropriate NATCEP costs and revenues only. NATCEP costs, including costs disallowed, must not be reimbursed as part of the facility's bundled rate. However, NATCEP costs, revenues, and reimbursement must be included on the facility's annual Nursing Facility Financial Statement (NFFS).

(F) Include only true and accurate information. If a facility knowingly, or with reason to know, files a request for reimbursement containing false information, such action must

constitute cause for termination of the facility's provider agreement with the Department. Providers filing false requests for reimbursements may be referred for prosecution under applicable statutes.

(25) CHARGING OF FEES PROHIBITED. The nursing facility must not charge a trainee any fee for participation in NATCEP or for any textbooks or other materials required for NATCEP if the trainee is employed by or has an offer of employment from a nursing facility on the date on which the NATCEP begins.

(36) FEES PAID BY EMPLOYER.

(a) All charges and materials required for NATCEP and fees for nursing assistant certification must be paid by the nursing facility if it offered employment at the facility on the date training began.

(b) If a nursing assistant who is not employed by a Medicaid certified facility or does not have an offer of employment by a Medicaid nursing facility on the date on which the NATCEP began becomes employed by, or receives an offer for employment from, a nursing facility within 12 months after completing a NATCEP, the employing facility must reimburse the nursing assistant on at least a monthly basis within the first three months of employment. Reimbursement must include for any NATCEP fees paid (including any for tuition, enrollment and textbook costs, testing fees for textbooks, or other required course materials) up to the amount determined by the Department that was paid by the nursing assistant. Evidence the nursing assistant paid for training must include receipt of payment and the graduation certificate from the school ~~and receipt of payment.~~

(c) Such reimbursement must be calculated on a pro rata basis. The reimbursement must be determined by dividing the cost paid by the nursing assistant by 12 and multiplying by the number of months during this 12-month period ~~in which that~~ the nursing assistant worked for the facility. The facility must claim the appropriate pro rata amount on each request for reimbursement it submits not to exceed the lesser of 12 months or the total number of months the nursing assistant was employed at that facility. The facility must maintain

evidence provided by the nursing assistant of the training costs incurred at an approved training facility.

(d) A facility shall reimburse a nursing assistant ~~prior to~~before submitting a request for reimbursement from the Department.

(47) FACILITY REIMBURSEMENT BY THE DEPARTMENT. The Department shall reimburse the facility for the Medicaid portion of the costs described in this section unless limited by the application of section (54) of this rule. This portion is calculated by multiplying the eligible costs paid by the facility by the percentage of resident days that are attributable to Medicaid residents during the reporting period. The Department's payment to the facility for the NATCEP cost is in addition to payments based upon the facility's bundled rate.

(a) EMPLOYEE COMPENSATION. Reimbursement for trainer hours must not exceed ~~1~~one and ~~1/3~~a one-third times the number of hours required for certification. A facility may claim reimbursement for the portion of an employee's compensation attributable to nursing assistant training if:

(A) The employee meets the qualifications of 42 CFR 483.152 and OAR chapter 851, division 061;

(B) The employee directly conducts training or testing in an approved program;

(C) The employee's compensation, including benefits, is commensurate with other licensed nurse compensation paid by the facility;

(D) The employee's total compensated hours do not exceed 40 in any week during which NATCEP reimbursement is claimed;

(E) No portion of the claimed reimbursement is for providing direct care services while assisting in the training of nursing assistants if providing direct care services is within the normal duties of the employee; and

(F) The facility provides the Department with satisfactory documentation to support the methodology for allocating costs between facility operation and NATCEP.

(b) TRAINING SPACE AND UTILITIES. Costs associated with space and utilities are eligible only if the space and utilities are devoted 100 percent to the NATCEP. The facility must provide documentation satisfactory to the Department to support the need for, and use of, the space and utilities.

(c) TEXTBOOKS AND COURSE MATERIALS. A portion of the cost of textbooks and materials is eligible if textbooks and materials are used primarily for NATCEP. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must provide satisfactory documentation supporting the NATCEP need for and percentage of use of textbooks and materials.

(d) EQUIPMENT. A portion of the cost of equipment is eligible if used primarily for NATCEP. However, equipment purchased for \$500 or more per item, must be prior approved by the Department to qualify for reimbursement. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must maintain satisfactory documentation supporting the NATCEP need for and percentage of use of the equipment. Disposition of equipment and software purchased in whole or in part under the Title XIX Medicaid Program must meet the requirements of the facility's provider agreement.

(e) CERTIFICATION FEES. Nursing assistant certification and recertification fees paid to the Oregon State Board of Nursing for facility employees are eligible.

(f) REIMBURSEMENT FOR NURSING ASSISTANTS. Reimbursement provided to nursing assistants pursuant to section (63) of this rule isare eligible. The training must have occurred at an approved training center, including nursing facilities in Oregon or other states. ~~A facility must notify the nursing assistants upon hire, that the nursing assistant may receive reimbursement up to 12 months after completing a NATCEP training program.~~ If a facility

chooses to reimburse the nursing assistant's full amount in one request, the facility may not recoup payment from a nursing assistant if the nursing assistant's employment ends, regardless of cause.

(g) CONTRACT TRAINERS. Payment for nursing assistant training classes provided under contract by persons who meet the qualifications of 42 CFR 483.152 ~~is~~are eligible for reimbursement. For this purpose, either the facility or the contractor must be approved for NATCEP. Allowable contract trainer payments shall be limited to the lesser of actual cost or the salary calculation described in section ~~(47)~~(a) of this rule.

(h) INELIGIBLE COSTS ~~—~~ TRAINEE WAGES. Wages paid to nursing assistants in training are not eligible for NATCEP reimbursement, but may be claimed as part of the daily reimbursement costs.

(i) REIMBURSEMENT FOR COMBINED CLASSES. If two or more Medicaid certified facilities cooperate to conduct nursing assistant training, the Department shall not reimburse any participating facility for the combined training class until all participating facilities have filed a request for reimbursement. For a combined class, the Department shall apportion reimbursement to participating facilities pro rata based on the number of students enrolled at the completion of the first 30 hours of classroom training or in any other equitable manner agreed to by the participating facilities. However, when cooperating facilities file separate NATCEP requests for reimbursements, nothing in this section authorizes the Department to deny or limit reimbursement to a facility based on a failure to file or a delay in filing by a cooperating facility.

~~(5) Notwithstanding section (4) of this rule, the Department shall calculate the 80th percentile of the Medicaid portion of reported NATCEP costs per trainee completing the training. If a facility's Medicaid portion exceeds the 80th percentile of costs, the Department shall evaluate the facility's NATCEP costs to determine whether its costs are necessary due to compelling circumstances including but not limited to:~~

~~(a) Rural or isolated location of the training facility;~~

~~(b) Critical individual care need;~~

~~(c) Shortage of nursing assistants available in the local labor market;  
or~~

~~(d) Absence or inadequacy of other training facilities or alternative training programs, e.g., community college training programs.~~

~~(6) If, under the analysis in section (5) of this rule, the Department finds that a facility's NATCEP costs are justified, the Department shall reimburse the reported costs pursuant to section (4) of this rule. However, if, under the analysis in section (5) of this rule, the Department finds that a facility's NATCEP costs are not justified, the Department shall reimburse the reported costs pursuant to section (4) of this rule but limited by the cost plateau.~~

~~(78) RECORDKEEPING, AUDIT, SANCTIONS, REPORTING, AND APPEAL.~~

(a) The facility must maintain supportive documentation for a period of not less than three years following the date of submission of the NATCEP request for reimbursement. This documentation must include records in sufficient detail to substantiate the request for reimbursement. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. The records must be maintained in a condition that can be audited.

(b) Each facility must submit a quarterly NATCEP report to the Department using the Department's approved method and format. The report must provide an accurate monthly account of nursing assistant new hires, which includes date of hire, date of completion of an approved Nursing Assistant Level 1 training program, and the date of reimbursement.

(A) The facility must submit the report to the Department no later than the end of the month immediately following the end of each calendar quarter. (Example: For the calendar quarter ending March 31, the report must be received no later than April 30.)

(B) Upon the Department's request, the facility must provide documentation to support the quarterly report including payroll records.

(c) All requests for reimbursements are subject to audit at the discretion of the Department. The facility shall be notified in writing of the amount to be reimbursed and of any adjustments to the request for reimbursement. Payment of any amounts due to the Department must be made within 60 days of the date of notification to the facility.

(d) Sanctions and remedies may be provided pursuant to OAR Chapter 411, Division 89. One or more remedies may be imposed by the Department when a facility fails to comply with state regulations. The remedy(s) issued by the Department may be based upon findings of noncompliance with one or more requirements of participation.

(ee) A facility is entitled to an informal conference and contested case hearing pursuant to ORS 183.413 through 183.470, as described in OAR 411-070-0435, to protest the reimbursement amount or the adjustment. If no written request for an informal conference or contested case hearing is made within 30 days, the decision becomes final.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

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

**CHAPTER 411  
DIVISION 89**

**NURSING FACILITIES/LICENSING - COMPLAINTS, INSPECTIONS,  
AND SANCTIONS**

**411-089-0030 Civil Penalties**

(1) **CONSIDERATIONS.** In determining the amount of a civil penalty the Department shall consider:

- (a) Any prior violations of statute or rule by the facility or licensee that relates to operation of a nursing facility;
- (b) The financial benefits, if any, realized by the facility as a result of the violation, such as costs avoided as a result of not having obtained sufficient staffing, equipment, or supplies;
- (c) The gravity of the violation, including the actual and potential threat to health, safety, and well-being of residents, the duration of the threat or number or times the threat occurred, and the number of residents threatened;
- (d) The severity of the actual or potential harm caused by the violation, including whether the actual or potential harm included loss of life or serious physical or emotional injury;
- (e) The facility's history of correcting violations and preventing recurrence of violations; and
- (f) Exhibit 89-1, Civil Penalty Chart, which is incorporated by reference and is a part of this rule.

(2) **SINGLE VIOLATION CIVIL PENALTIES.** Violations of any requirement within any part of the following statutes, rules, or sections of the following

rules are a violation that may result in a civil penalty after a single occurrence.

(a) Violations involving direct resident care, feeding, or sanitation involving direct resident care, including any violation of:

(A) OAR 411-085-0060 (Specialty Nursing Facilities);

(B) OAR 411-085-0200(2) (Facility Employees);

(C) OAR 411-085-0210 to 411-085-0220 (Facility Policies, Quality Assurance);

(D) OAR 411-085-0360 (Abuse);

(E) OAR 411-086-0010 to 411-086-0020 (Administrator, Director of Nursing Services);

(F) OAR 411-086-0040 (except section (3)) (Admission of Residents);

(G) OAR 411-086-0050 to 411-086-0060 (Day Care, Assessment, and Care Plan);

(H) OAR 411-086-0110 to 411-086-0150 (Nursing Services);

(I) OAR 411-086-0200 to 411-086-0260 (Physician, Dental, Rehabilitative, Activity, Social, Dietary, and Pharmaceutical Services);

(J) OAR 411-086-0300 (except section (6)) (Clinical Records);

(K) OAR 411-086-0310 to 411-086-0360 (Employee Orientation and Training, Disaster Preparation, Infection Control, Smoking, Furnishings, and Equipment);

(L) OAR 411-087-0100(1)(a) and (c) (Repair and Cleanliness);  
or

(M) OAR 411-087-0440 (Alarm and Nurse Call Systems).

(b) Violation involving failure to provide staff-to-resident ratio, including any violation of:

(A) OAR 411-086-0030 (except section (1)) (RN Care Manager); or

(B) OAR 411-086-0100 (Nursing Staffing).

(c) Violation of any rule adopted pursuant to ORS 441.610, including:

(A) OAR 411-085-0300 to 411-085-0350 (Resident Rights);

(B) OAR 411-086-0040(3) (Advance Directives);

(C) OAR 411-086-0300(6) (Record Retention); or

(D) OAR chapter 411, division 088 (Rights Regarding Transfers).

(d) Violation of ORS 441.605 (Resident Rights) or any general or final order of the Department.

(e) Violation of OAR 411-070-0470 (2) (3), (5), (6), (8) (Nursing Assistant Training and Competency Evaluation Programs Reimbursement).

(3) CIVIL PENALTIES REQUIRING REPEAT VIOLATIONS. Violation of any Department rule not listed in section (2) of this rule is subject to a civil penalty under the following circumstances:

(a) Such violation is determined to exist on two consecutive surveys, inspections, or visits; and

(b) The Department prescribed a reasonable time for elimination of the violation at the time of, or subsequent to, the first citation.

(4) AMOUNT OF CIVIL PENALTY.

(a) Violation of any requirement or order listed in section (2) of this rule is subject to a civil penalty of not more than \$500 for each day the violation occurs, unless otherwise provided by this section.

(b) Violation of any requirement listed in section (3) of this rule is subject to a civil penalty of not more than \$500 per violation, unless otherwise provided by this section.

(c) Violation involving resident abuse that resulted in serious injury or death is subject to a civil penalty of not less than \$500 nor more than \$1,000, or as otherwise required by federal law (ORS 441.995(3) and ORS 441.715(1)(c)).

(d) The Department shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed \$15,000 in any 90-day period.

(A) To impose this civil penalty, the Department shall establish:

(i) The abuse arose from deliberate or other than accidental action or inaction;

(ii) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(iii) The person substantiated for the abuse had a duty of care toward the resident.

(B) For the purposes of this civil penalty, the following definitions apply:

(i) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(ii) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(iii) "Sexual abuse" means any form of sexual contact between an employee of a nursing facility or a person providing services in the nursing facility and a resident of that facility, including, but not limited to, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(iv) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct the licensee is responsible, to comply with applicable Oregon Administrative Rules.

**(5) ADMINISTRATOR SANCTIONS - NURSING FACILITY CLOSURES.**

Any individual who is or was the administrator of a facility and fails or failed to comply with the requirements at OAR 411-085-0025(2)(d)(e)(f)(h), OAR 411-085-0025(3)(a), or OAR 411-088-0070(1)(g), (3)(d), or (4):

(a) Are subject to a civil monetary penalty as follows:

(A) A minimum of \$500 for the first offense;

(B) A minimum of \$1,500 for the second offense; and

(C) A minimum of \$3,000 for the third and subsequent offenses.

(b) May be subject to exclusion from participation in any Federal health care program as defined in section 1128B(f) of the Patient Protection and Affordable Care Act; and

(c) Are subject to any other penalties that may be prescribed by law.

**(6) PAYMENT TO BE CONSIDERED ADMISSION OF VIOLATION.** Unless the Department agrees otherwise, for purposes of history of the facility, any

payment of a civil penalty is treated by the Department as a violation of the statutes or rules alleged in the civil penalty notice for which the civil penalty was paid.

(7) All penalties recovered are deposited in the Quality Care Fund.

(8) NOTICE. The Department's notice of its intent to impose a civil penalty shall include the statements set out in OAR 411-089-0040(3)(a)-(f) and shall also include a statement that if the licensee fails to request a hearing within 10 days of the date the notice was mailed, the licensee shall have waived the right to a hearing.

(9) HEARING REQUEST.

(a) If the Department issues a notice of intent to impose a civil penalty, the licensee is entitled to a hearing in accordance with ORS chapter 183.

(b) A request for a hearing must be in writing and must be received by the Department within 10 days of the date the notice of intent to impose a civil penalty was mailed to the licensee. The hearing request must include an admission or denial of each factual matter alleged in the notice and must affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Department may extend the time allowed for submission of the admission or denial and affirmative defenses for up to 30 calendar days.

(10) DEFAULT ORDER. If a hearing is not timely requested, if the licensee withdraws a hearing request, or fails to appear at a scheduled hearing, the Department may enter a final order by default imposing the civil penalty. In the event of a default, the Department's file on the subject of the civil penalty automatically becomes a part of the record for purposes of proving the Department's prima facie case.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715, 441.990

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715, 441.990