

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION
For internal agency use only.

Oregon Department of Human Services (ODHS), Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
Kristina Krause	apd.rules@odhsoha.state.or.us	503-339-6104
Rules Coordinator	Email	Telephone
Jeremiah Adams	Jeremiah.J.Adams@odhs.oregon.gov	503-991-2053
Filing Contact	Email	Telephone

FILING CAPTION

APD: Amending 411-085 to address LGBTQIA2S+ protections in nursing facilities (SB 99 (2023))

Agency Approved Date: [02/08/2024]

Effective Date: [04/01/2024] through [09/27/2024]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

AMEND:

411-085-0005; 411-085-0030; 411-085-0210; 411-085-0310

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is immediately amending rules in OAR chapter 411, division 085. The amendments include the following:

Amend: 411-085-0005

Rule Title: Definitions

Rule Summary: Adds new definitions related to LGBTQIA2S+ protections, including “gender expression,” “gender identity,” “gender nonconforming,”

“gender transition,” “harass” or “harassment,” “LGBTQIA2S+,” “sexual orientation,” “staff” or “staff person,” and “transgender.”

Amend: 411-085-0030

Rule Title: Required Postings

Rule Summary: Requires posting of LGBTQIA2S+ non-discrimination policy.

Amend: 411-085-0210

Rule Title: Facility Policies

Rule Summary: Requires facilities to develop protocols and policies addressing LGBTQIA2S+ protections.

Amend: 411-085-0310

Rule Title: Residents’ Rights: Generally

Rule Summary: Requires facilities to establish protections against discrimination of LGBTQIA2S+ residents.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

The Oregon Department of Human Services (Department) is amending OAR chapter 411, division 085 to implement SB 99 (2023 Regular Session), which requires facilities to implement protections for Nursing Facility residents who identify as LGBTQIA2S+. These rules need to be adopted promptly so that the department will be in compliance with SB 99 (2023 Regular Session).

Justification of Temporary Filing:

Failure to act promptly and immediately amend OAR chapter 411, division 085 will result in serious prejudice to the public interest, including nursing facility residents who identify as LGBTQIA2S+. These rules need to be adopted promptly so that the department will be in compliance with SB 99 (2023 Regular Session) and require facilities to establish protections to preserve the rights of residents who identify as LGBTQIA2S+.

Documents Relied Upon, and where they are available:

Senate Bill 99 Enrolled (2023 Regular Session):

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB99>

/s/ Nakeshia Knight-Coyle, Director, Aging and People with Disabilities

02/08/2024

Signature

Date

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

**CHAPTER 411
DIVISION 085**

NURSING FACILITIES/LICENSING – GENERALLY

411-085-0005 Definitions

Unless the context requires otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 70, 85, 86, and 89:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries a reasonable and prudent individual is able to prevent, such as hitting, pinching or striking, or injury resulting from rough handling.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity.

(c) Sexual contact with a resident, including fondling, caused by an employee, agent, or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another individual, borrowing resident funds, spending resident funds without the resident's consent, or if the resident is not capable of consenting, spending resident funds for

items or services from which the resident is unable to benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal abuse as prohibited by federal law, including the use of oral, written, or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment, or deprivation, directed toward the resident.

(g) Corporal punishment.

(h) Involuntary seclusion for convenience or discipline.

(3) "Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.

(4) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercises that are designed to maintain or improve physical and mental well-being and social skills.

(5) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(6) "Applicant" means the individual required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes a sole proprietor, each partner in a partnership, or a corporation that operates a nursing facility on behalf of the nursing facility business owner.

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.

(8) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(9) "APD" means "Aging and People with Disabilities."

(10) "Assessment" means a written evaluation of a resident's abilities, condition, and needs based upon resident interview, observation, clinical and social records, and other available sources of information.

(11) "Bariatric rate" means a rate paid for a Medicaid resident of a nursing facility if the resident meets the criteria described in OAR 411-070-0087.

(12) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, and psychosocial functioning, as well as to provide reasonable safety, all consistent with the preferences of the resident.

(13) "Certified Medication Aide" means "certified medication assistant" as defined in this rule.

(14) "Certified Medication Assistant" means a certified nursing assistant who has been certified as a medication assistant or medication aide pursuant to ORS chapter 678 and the rules adopted thereunder.

(15) "Certified Nursing Assistant" means an individual who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.

(16) "Change of Operator" means "change of ownership" as defined in this rule.

(17) "Change of Ownership" means a change in the individual or entity that owns the facility business, a change in the individual or entity responsible for the provision of services at the facility, or both. Events that change ownership include, but are not limited to:

- (a) A change in the form of legal organization of the licensee;
- (b) Transfer of the title to the nursing facility enterprise by the owner to another party;
- (c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;
- (d) If the licensee is a partnership, any event that dissolves the partnership;
- (e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or
- (f) Any other event that results in a change of the operating entity.

(18) "Control Interest" means "management" as defined in this rule.

(19) "Day Care Resident" means an individual who is not bedfast who receives services and care in a nursing facility for not more than 16 hours per day.

(20) "Department" means the Department of Human Services (DHS).

(21) "Drug" has the same meaning set forth in ORS chapter 689.005.

(22) "Entity" means "Individual" as defined in this rule.

(23) "Establish a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.

(24) "Facility" means an establishment that is licensed and certified by the Department as a nursing facility.

(25) "Facility Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee under ORS 441.277 to 441.323 or the appointment of a temporary manager under ORS 441.333 for a nursing facility or a residential care facility.

(26) "Gender expression" means an individual's gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the individual was assigned at birth.

(27) "Gender identity" means an individual's internal, deeply held knowledge or sense of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth or name and sex as it appears in medical records or as it is described by any other individual, including a family member, conservator or legal representative of the individual. An individual's gender identity is the last gender identity expressed by an individual who lacks the present ability to communicate.

(28) "Gender nonconforming" means having a gender expression that does not conform to stereotypical expectations of one's gender.

(29) "Gender transition" means a process by which an individual begins to live according to that individual's gender identity rather than the sex the person was assigned at birth. The process may or may not include changing the individual's clothing, appearance, name or identification documents or undergoing medical treatments.

(30) "Harass" or "harassment" means to act in a manner that is unwanted, unwelcomed or uninvited, or that demeans, threatens or offends a resident.

(a) This includes bullying, denigrating or threatening a resident based on a resident's actual or perceived status as a member of one of the protected classes in Oregon, as provided:

(A) Race.

(B) Color.

(C) National origin.

(D) Religion.

(E) Disability.

(F) Sex (includes pregnancy).

(G) Sexual orientation.

(H) Gender identity.

(I) Age.

(J) Marital status

(b) An example of "harassment" includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom or other area of a facility that is available to other individuals of the same gender identity as the resident.

(3126) "Health Care Facility" means a health care facility as defined in ORS 442.015, a residential care facility as defined in ORS 443.400, and an adult foster home as defined in ORS 443.705.

(3227) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.

(3328) "Incident of Ownership" means:

(a) An ownership interest;

(b) An indirect ownership interest; or

(c) A combination of direct and indirect ownership interest.

(~~3429~~) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(~~3530~~) "Individual" means an entity including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit as defined in ORS 442.015 including associations, joint stock companies, insurance companies, the state, or a political subdivision or instrumentality, including a municipal corporation.

(~~3634~~) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.

(~~3732~~) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department, or a "Type B" Area Agency on Aging and includes, but is not limited to, a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring, or complaint investigation.

(~~3833~~) "Legal Representative" means an attorney at law, the individual holding a general power of attorney or special power of attorney for health care, a guardian, a conservator, any individual appointed by a court to manage the personal or financial affairs of a resident, or an individual or agency legally responsible for the welfare or support of a resident other than the facility.

(39) “LGBTQIA2S+” means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation. These terms are defined below:

(a) “Lesbian” means the sexual orientation of a person who is female, feminine or nonbinary and who is physically, romantically or emotionally attracted to other women. Some lesbians may prefer to identify as gay, a gay woman, queer or in other ways.

(b) “Gay” means the sexual orientation of a person attracted to people of the same gender. Although often used as an umbrella term, it is used more specifically to describe men attracted to men.

(c) “Bisexual” means a person who has the potential to be physically, romantically and/or emotionally attracted to people of more than one gender, not necessarily at the same time, in the same way or to the same degree.

(d) “Transgender” means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.

(e) “Queer” means individuals who do not identify as exclusively straight or individuals who have non-binary or gender-expansive identities and is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole. This term was previously used as a slur, but has been reclaimed by many parts of the LGBTQIA2S+ movement. It can also include transgender people who identify as male or female. The term should only be used to refer to a specific person if that person self-identifies as queer.

(f) “Intersex” means someone born with a variety of differences in their sex traits and reproductive anatomy. Intersex traits greatly vary, including differences in, but limited to, hormone production and reproductive anatomy.

(g) "Asexual" or "Ace" means a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little or conditional sexual attraction. Many people who are asexual still identify with a specific romantic orientation.

(h) "2S" or "Two-Spirit" means a term used within some Indigenous communities, encompassing cultural, spiritual, sexual and gender identity. The term reflects complex indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. The definition and common use of the term two-spirit may vary among Tribes and Tribal communities.

(i) The "+" means all other identities and expressions of gender, romantic and sexual orientation, including minority gender identities.

(j) "Nonbinary" means a person who does not identify exclusively as a man or a woman. Nonbinary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all nonbinary people do. Nonbinary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.

(3440) "Licensed Nurse" means a registered nurse or a licensed practical nurse.

(3541) "Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.

(3642) "Licensee" means the applicant to whom a nursing facility license has been issued.

(3743) "Local Designee of the Department" means the local unit of the Department or the Area Agency on Aging.

(3844) "Long Term Care Facility" means "nursing facility" as defined in this rule.

(3945) "LPN" means "licensed practical nurse" as defined in this rule.

(4046) "Maintain a Nursing Facility" means "establish a nursing facility" as defined in this rule.

(4147) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(4842) "Management" means:

(a) Possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of, an institution, organization, or agency; or

(b) An interest as an officer or director of an institution, organization, or agency organized as a corporation.

(4943) "New Construction" means:

(a) A new building;

(b) An existing building or part of a building that is not currently licensed as a nursing facility;

(c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed, such as, rooms that are proposed to be licensed as nursing facility resident rooms, but are not currently licensed as nursing facility resident rooms;

(d) A major alteration to an existing building;

(e) An addition to an existing building;

(f) A conversion in use; or

(g) Renovation or remodeling of an existing building.

(5044) "NFPA" means "National Fire Protection Association".

(5145) "Nurse Aide" means "nursing assistant" as defined in this rule.

(5246) "Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.

(5347) "Nursing Assessment" means evaluation of fluids, nutrition, bowel or bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, analysis or evaluation of that data, and utilization of available resource information.

(5448) "Nursing Assistant" means an individual who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes, but is not limited to, a certified nursing assistant, a certified medication assistant, and individuals who have successfully completed a state approved nurse assistant training course.

(5549) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(5650) "Nursing Facility" means an establishment with permanent facilities, including inpatient beds, that provides medical services, including nursing services, but excluding surgical procedures, and that provides care and

treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that may not be delegated to an unlicensed individual. "Nursing Facility" only includes facilities licensed and operated pursuant to ORS 441.020(2).

(~~5754~~) "Nursing Facility Administrator" means an individual licensed under ORS chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing, and controlling the operation of a nursing facility.

(~~5852~~) "Nursing Facility Law" means ORS chapter 441 and the rules for nursing facilities adopted thereunder.

(~~5953~~) "Nursing Home" means "nursing facility" as defined in this rule.

(~~6054~~) "Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in a facility.

(~~6155~~) "The Office of Licensing and Regulatory Oversight (OLRO)," through its Nursing Facility Licensing and Survey Units, is the DHS office responsible for the licensing, inspections, surveys, sanctions, and enforcement for non-compliance of nursing facilities, and with APD, is jointly responsible for policy development.

(~~6256~~) "Owner" means an individual with an ownership interest.

(~~6357~~) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an entity.

(~~6458~~) "Pharmacist" has the same meaning as set forth in ORS 689.005.

(~~6559~~) "Pharmacy" has the same meaning as set forth in ORS 689.005.

(~~6660~~) "Physician" means an individual licensed under ORS chapter 677 as a physician.

(~~6761~~) "Physician's Assistant" means an individual registered under ORS chapter 677 as a physician's assistant.

(~~6862~~) "Podiatrist" means an individual licensed under ORS chapter 677 to practice podiatry.

(~~6963~~) "Prescription" has the same meaning as set forth in ORS 689.005.

(~~7064~~) "Public or Private Official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(c) Employee of the Department, Oregon Health Authority, Area Agency on Aging, county health department, community mental health program, community developmental disability program, or nursing facility;

(d) Individual who contracts to provide services to a nursing facility;

(e) Peace officer;

(f) Clergy;

(g) Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist;

(h) Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist;

- (i) Senior center employee;
- (j) Information and referral or outreach worker;
- (k) Any public official who comes in contact with elderly individuals in the performance of the official's official duties;
- (l) Firefighter or emergency medical technician;
- (m) Legal counsel for a resident; or
- (n) Guardian for, or family member of, a resident.

(~~7165~~) "Registered Nurse (RN)" means an individual licensed under ORS chapter 678.

(~~7266~~) "Rehabilitative Services" means specialized services provided by a therapist or a therapist's assistant to a resident to attain optimal functioning, including, but not limited to, physical therapy, occupational therapy, speech and language therapy, and audiology.

(~~7367~~) "Relevant Evidence" means factual information that tends to either prove or disprove the following:

- (a) Whether abuse or other rule violation occurred;
- (b) How abuse or other rule violation occurred; or
- (c) Who was involved in the abuse or other rule violation.

(~~6874~~) "Resident" means an individual who has been admitted, but not discharged from a facility.

(7569) "Restorative Aide" means a certified nursing assistant primarily assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities according to the resident's restorative plan of care and pursuant to OAR 411-086-0150.

(7670) "Restorative Nursing" means "restorative services" as defined in this rule.

(7774) "Restorative Services" mean the measures provided by nursing staff and directed toward re-establishing and maintaining a residents' fullest potential.

(7872) "RN" means "registered nurse" as defined in this rule.

(7973) "Safety" means the condition of being protected from environmental hazards without compromise to a resident's or legal guardian's choice, or undue sacrifice of a resident's independence.

(80) "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.

(8174) "Significant Other" means an individual designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation and there is no court-appointed individual, then a significant other means a family member or friend who has demonstrated consistent concern for the resident. No rule using this term is intended to allow release of, or access to, confidential information to individuals who are not otherwise entitled to such information, or to allow such individuals to make decisions they are not entitled to make on behalf of a resident.

(82) "Staff or "staff person" means one or more individuals who are employed by the facility to provide services or supports to residents or contract with or are employed by an entity that contracts with the facility to provide services or supports to residents.

(8375) "Suspected Abuse" means reasonable cause to believe abuse may have occurred.

(84) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.

Stat. Auth.: ORS 410.070, 441.055, 441.122, 441.615, 441.637
Stats. Implemented: ORS 410.070, 441.055, 441.111, 441.615, 441.630, 441.637, 441.650

411-085-0030 Required Postings

(1) PUBLIC NOTICES:

(a) Content. Public notices required to be posted include:

(A) The most recent licensing and, if applicable, certification survey reports;

(B) The placard provided by the Department that includes information on reporting of abuse and summarizes the nursing facility rules. In addition to the location specified in subsection (1)(b) of this rule, this placard must also be prominently and conspicuously posted in close proximity to each nursing station and in any area where residents are admitted;

(C) The current week's menu and activities schedule;

(D) The facility license and the administrator's license. (It is recommended the titles and names of the administrator, the DNS, the Social Services Director, the Activities Director, the

Dietary Services Supervisor and the RN Care Manager(s) are also posted);

(E) Waivers received from the Department pursuant to OAR 411-085-0040 and 411-087-0030, and waivers of any federal regulations; ~~and~~

(F) The LGBTQIA2S+ Protections, as described in OAR 411-085-0310(21);

(G) The facility's non-discrimination policy notice, as described in OAR 411-085-0210(1)(w); and

(H) Any other notice relevant to residents or visitors required by state or federal law.

(b) Location. The facility shall designate a specific area where notices listed in subsection (1)(a) of this rule must be posted. The location shall be in an area that:

(A) Is routinely accessible and conspicuous to residents and visitors, including those in wheelchairs; and

(B) Provides sufficient space for prominent, conspicuous display of each notice.

(2) NOTICES FOR STAFF. The facility must post the names of registered nurses as required by OAR 411-086-0020 and any physician available for emergencies as required by OAR 411-086-0200 at each nursing station.

Stat. Auth.: ORS 410.070, 441.055, 441.122

Stats. Implemented: ORS 441.055, 441.067, 441.112, 441.615

411-085-0210 Facility Policies

(1) A Quality Assessment and Assurance Committee must develop and adopt facility policies. The policies must be followed by the facility staff and evaluated annually by the Quality Assessment and Assurance Committee and rewritten as needed. Policies must be adopted regarding:

- (a) Admission, fees, and services;
- (b) Transfer and discharge, including discharge planning;
- (c) Physician services;
- (d) Nursing services;
- (e) Dietary services;
- (f) Rehabilitative services and restorative services;
- (g) Pharmaceutical services, including self administration;
- (h) Care of residents in an emergency;
- (i) The referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident;
- (j) Activities;
- (k) Social services;
- (l) Clinical records;
- (m) Infection control;
- (n) Diagnostic services;
- (o) Oral care and dental services;
- (p) Accident prevention and reporting of incidents;

(q) Housekeeping services and preventive maintenance;

(r) Employee orientation and in-service;

(s) Laundry services;

(t) Possession of firearms and ammunition;

(u) Consultant services;

(v) Resident grievances;

(w) LGBTQIA2S+ Protections policy that includes adding the following statement in its written materials, and in all places and on all materials where that policy or other written materials are posted:

“(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual’s actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual’s association with another individual on account of the other individual’s actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Oregon Department of Human Services at (provide current contact information).”; and

(xw) Facility closure. The policy must identify an administrator’s responsibility to assure compliance with OAR 411-085-0025, OAR 411-088-0020(1)(f), and OAR 411-088-0070(1)(g), (3)(d), and (4).

(2) Each policy must be in writing and must specify the date the policy was last reviewed by the Quality Assessment and Assurance Committee.

Stat. Auth.: ORS 410.070, 441.055, 441.122, 441.615

Stats. Implemented: ORS 441.055, 441.112, 441.615

411-085-0310 Residents' Rights: Generally

The facility must protect, encourage, and assist the resident in exercising the rights identified in OAR 411-085-0300 – OAR 411-085-0350. Each resident and the resident's legal representative, as appropriate, have the right to:

- (1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.
- (2) Be fully informed, orally and in writing, in a language the resident understands of these rights, and of all facility guidelines for resident conduct and responsibilities. This must be documented by the resident's written acknowledgment, before or at the time of admission.
- (3) Be fully informed, before or at the time of admission and during the resident's stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.
- (4) Be fully informed of his or her total health status, including, but not limited to medical status. The resident must be informed of the right to choose his or her own physician and to be fully informed in advance of any changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his or her own decisions and fully participate in care and care planning unless the resident has been found legally incapable of doing so.
- (5) Refuse any medication, treatment, care, or any participation in experimental research unless the resident has been found legally incapable of doing so.

(6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.

(7) Be free from verbal, sexual, mental and physical abuse, corporal punishment, and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.

(8) Be transferred or discharged only in accordance with the Aging and People with Disabilities transfer and discharge rules in OAR chapter 411, division 088.

(9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects.

(a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days.

(b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment may have a significant adverse impact on the resident's medical or psychological status.

(c) Moving residents on the basis of source of payment is not just cause for intra-facility transfers.

(d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.

(10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act

promptly upon grievances and recommendations received from residents and family groups.

(11) Be treated with consideration, respect, and dignity and assured complete privacy during treatment and when receiving personal care.

(12) To be given informed consent before any nontherapeutic examination, observation or treatment is provided.

(13~~2~~) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened, and to have regular access to the private use of a telephone.

(14~~3~~) Be provided privacy for visits when requested, including meetings with other residents and family groups.

(15~~4~~) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, Aging and People with Disabilities, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.

(16~~5~~) Promptly inspect all records pertaining to the resident.

(17~~6~~) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no case require more than two business days (days excluding Saturdays, Sundays and state holidays).

(18~~7~~) Participate in social, religious, and community activities at the discretion of the resident.

(198) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.

(2019) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, the facility, or any person subject to the supervision, direction, or control of the facility, shall not retaliate by:

(a) Increasing charges or decreasing services, rights, or privileges;

(b) Threatening to increase charges or decrease services, rights, or privileges;

(c) Taking or threatening any action to coerce or compel the resident to leave the facility; or

(d) Abusing, harassing, or threatening to abuse or harass a resident.

(21) LGBTQIA2S+ PROTECTIONS. A facility and the staff of the facility may not take any of the following actions based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status:

(a) Deny admission to a facility, transfer or refuse to transfer a resident within a facility or to another facility or discharge or evict a resident from a facility;

(b) Deny a request by a resident to choose the resident's roommate, when a resident is sharing a room;

(c) Refuse to assign a room to a transgender or other LGBTQIA2S+ resident other than in accordance with the resident's gender identity, unless at the request of the resident or if required by federal law;

(d) Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery or presents as gender nonconforming. Harassment includes, but is not limited to, requiring a resident to show documentation of gender identity in order to gain entrance to a restroom or other area of a care facility that is available to other individuals of the same gender identity as the resident;

(e) Repeatedly and willfully refuse to use a resident's name or pronouns after being reasonably informed of the resident's name or pronouns;

(f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics, or to engage in grooming practices, that are permitted to any other resident;

(g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner;

(h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort;

(i) Fail to accept a resident's verbal or written attestation of the resident's gender identity or require a resident to provide proof of the resident's gender identity using any form of identification;

(j) Fail to take reasonable actions, within the care facility's control, to prevent discrimination or harassment when the facility knows or should have known about the discrimination or harassment;

(k) Refuse or willfully fail to provide any service, care or reasonable accommodation to a resident; or

(l) Refuse or willfully fail to provide any service, care or reasonable accommodation to a potential resident applying for services or care.

(~~229~~) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.

(~~234~~) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.

(~~242~~) Receive care from facility staff trained to provide care that is specific to the resident's disease or medical condition.

(~~253~~) Receive a modified or special diet that meets the specific requirements of the resident's disease or medical condition.

Stat. Auth.: ORS 410.070, 441.055, 441.122

Stats. Implemented: ORS 441.055, 441.112, 441.114, 441.600, 441.610, 441.615, 441.700