

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

---

Agency and Division	Administrative Rules Chapter Number
Christina Hartman	(503) 945-6398
500 Summer Street NE, E-10 Salem, OR 97301-1074	

---

Rules Coordinator	Address	Telephone

**RULE CAPTION**

**Nursing Facility Policy for Treatment or Referral of Acute Sexual Assault Victims**

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

---

January 21, 2014	2 p.m.	Human Services Building 500 Summer Street NE, Rm. 160 Salem, Oregon 97301	Staff
------------------	--------	---	-------

---

Hearing Date	Time	Location	Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

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

**ADOPT:**

**AMEND:**

411-085-0005, 411-085-0210

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.:** ORS 410.070, 441.055, & 441.615

---

**Other Auth.:** SB 557 (2011 Regular Session) & OL 2011 chapter 511

---

**Stats. Implemented:** ORS 147.403, 441.055, & 441.615

---

**RULE SUMMARY**

The Department of Human Services (Department) is proposing to amend OAR 411-085-0005 and 411-085-0210 for nursing facilities to implement Senate Bill 557 (2011 Regular Session) by requiring nursing facilities to develop and adopt a policy for the referral and treatment of residents who may be victims of acute sexual assault. Proposed rule changes also reflect current practice and Department terminology and correct formatting and punctuation.

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.

**January 23, 2014 at 5 p.m.**

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

**Signed P. Donna Keddy, Licensing and Regulatory Oversight**

**11/18/2013**

Signature

Date

**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

---

Agency and Division

Administrative Rules Chapter Number

---

**Nursing Facility Policy for Treatment or Referral of Acute Sexual Assault Victims**

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 411-085-0005 and 411-085-0210 relating to nursing facilities.**

Statutory Authority: **ORS 410.070, 441.055, & 441.615**

Other Authority: **SB 557 (2011 Regular Session) & OL 2011 chapter 511**

Stats. Implemented: **ORS 147.403, 441.055, & 441.615**

Need for the Rule(s):

The Department needs to amend OAR 411-085-0005 and 411-085-0210 for nursing facilities to implement Senate Bill 557 (2011 Regular Session), reflect current practice and Department terminology, and correct formatting and punctuation. The proposed rules implement Senate Bill 557 by requiring nursing facilities to develop and adopt a policy for the referral and treatment of residents who may be victims of acute sexual assault.

Documents Relied Upon, and where they are available:

**SB 557 (2011 Regular Session)**

*Available at:* <https://olis.leg.state.or.us/liz/2011R1/Measures/Text/SB557/Enrolled>

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 411-085-0005 and 411-085-0210 will have the following fiscal and economic impact:

**State Agencies:** The Department is not expecting any additional fiscal and economic impact on the Department because the Department currently conducts annual on-site inspections and complaint investigations for nursing facilities. The Department is not expecting any fiscal and economic impact on other state agencies.

**Units of Local Government:** The Department is not expecting any additional fiscal and economic impact on units of local government because compliance will be evaluated by existing licensing and survey staff.

Individuals Receiving Services: The Department is not expecting any additional fiscal and economic impact on individuals receiving services because the proposed changes are considered a nursing facility administrative service that is included in the bundled rate.

Nursing Facilities: Nursing facilities will need to implement the new policy requirement, investigate and identify facilities that are qualified to conduct evaluations of residents that have been identified as potential victims, and provide staff training for policy implementation. The Department estimates the implementation of SB 557 to be approximately \$1,200 to \$1,400 per facility for formulating written policies and procedures, training, and labor costs for the nursing facility administrator and the director of nursing services.

Public: The Department is not expecting any fiscal or economic impact on the public because implementation is exclusively for nursing facilities.

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 approximately 140 nursing facilities impacted by the proposed rule changes. There are 13 nursing facilities that may be considered small businesses as defined in 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?

Small businesses 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 Rule Advisory Committee included representation from the Oregon Health Care Association, Office of the Long Term Care Ombudsman, Multnomah County Adult Protective Services, LeadingAge Oregon, Lane County Legal Assistance, Oregon Law Center, and various nursing facility administrators.

Signed P. Donna Keddy, Licensing and Regulatory Oversight

11/18/2013

Signature

Date

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

**CHAPTER 411  
DIVISION 85**

**NURSING FACILITIES/LICENSING – GENERALLY**

**411-085-0005 Definitions**

~~As used in OAR chapter 411, divisions 70 and 85 to 89, u~~Unless the rule context requires otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 70, 85, and 89:

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

(~~12~~) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent individual would have been 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 cannot 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.

| (23) "Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.

| (34) "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.

| (46) "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 ~~the a~~ sole proprietor, each partner in a partnership, or ~~the a~~ corporation that operates ~~the a~~ nursing facility on behalf of the nursing facility business owner.

| (57) "Area Agency on Aging (AAA)" means a Type B Area Agency on Aging that is an established public agency within a planning and service area designated under the Older Americans Act, 42 U.S.C. 3025, that has responsibility for local administration of ~~Division-Department~~ programs.

| (68) "Assessment" means a written evaluation of ~~the a~~ resident's abilities, condition, and needs based upon resident interview, observation, clinical and social records, and other available sources of information.

(79) "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.

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

(811) "Certified Medication Assistant" ~~or "Certified Medication Aide"~~ 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.

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

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

(4014) "Change of Ownership" ~~and "Change of Operator"~~ 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.

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

~~(1416)~~ "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.

~~(14217)~~ "Department" means the Department of Human Services.

~~(14318)~~ "Division" means the "Department" of Human Services, Seniors and People with Disabilities Division as defined in this rule.

~~(14419)~~ "Drug" has the same meaning set forth in ORS chapter 689.005.

~~(14520)~~ "Entity" means "Individual" as defined by these rules in this rule.

~~(14621)~~ "Establish a Nursing Facility" or "Maintain a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.

~~(14722)~~ "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Division Department as a nursing facility.

~~(14823)~~ "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.

~~(14924)~~ "Health Care Facility" means a health care facility as defined in ORS 442.015, but also includes a residential care facility as defined in ORS 443.400, and an adult foster home as defined in ORS 443.705.

~~(2025)~~ "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.

~~(2126)~~ "Incident of Ownership" means:



- (a) An ownership interest;
- (b) An indirect ownership interest; or
- (c) A combination of direct and indirect ownership interest.

| ([2227](#)) "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.

| ([2328](#)) "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.

| ([2429](#)) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.

| ([2530](#)) "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.

| ([2631](#)) "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, ~~or~~ 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, ~~or~~ other than the facility.

| ([2732](#)) "Licensed Nurse" means a registered nurse or a licensed practical nurse.

| ([2833](#)) "Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.

(~~2934~~) "Licensee" means the applicant to whom a nursing facility license has been issued.

(~~3035~~) "Local Designee of the ~~Division~~Department" means the local unit of the ~~Division~~Department or the ~~Type B~~ Area Agency on Aging.

(~~3436~~) "Long Term Care Facility" means "nursing facility" as defined in this rule.

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

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

(~~3239~~) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(~~3340~~) "Management" ~~or "Control Interest"~~ 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.

(~~3441~~) "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, ~~(e.g., 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 additions, to an existing building; or

(f) A conversions in use; or

(eg) Renovation or remodeling of an existing buildings.

(3542) "NFPA" means "National Fire Protection Association".

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

(3644) "Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.

(3745) "Nursing Assessment" means evaluation of fluids, nutrition, bowel/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.

(3846) "Nursing Assistant" or "Nurse Aide" 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.

(3947) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(4048) "Nursing Facility" means an establishment with permanent facilities, including inpatient beds, that provides s medical services, including nursing services, but excluding surgical procedures, and that provides s care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that cannot be delegated to an unlicensed

individual. "Nursing Facility" ~~shall~~ only includes facilities licensed and operated pursuant to ORS 441.020(2).

(4149) "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.

(4250) "Nursing Facility Law" means ORS chapter 441 and the rules for nursing facilities adopted ~~pursuant thereto~~ thereunder.

(4351) "Nursing Home" means "nursing facility" as defined in this rule.

(4452) "Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in ~~the~~ a facility.

(4553) "Owner" means an individual with an ownership interest.

(4654) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(4755) "Pharmacist" has the same meaning as set forth in ORS 689.005.

(4856) "Pharmacy" has the same meaning as set forth in ORS 689.005.

(4957) "Physician" means an individual licensed under ORS chapter 677 as a physician.

(5058) "Physician's Assistant" means an individual registered under ORS chapter 677 as a physician's assistant.

(5159) "Podiatrist" means an individual licensed under ORS chapter 677 to practice podiatry.

(5260) "Prescription" has the same meaning as set forth in ORS 689.005.

(5361) "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, Area Agency on Aging, county health department, community mental health program, community developmental ~~disabilities~~ 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 ~~the~~ a resident; or

(n) Guardian for, or family member of, ~~the~~ a resident.

(5462) "Registered Nurse (RN)" means an individual licensed under ORS chapter 678.

(5563) "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.

(5664) "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.

(5765) "Resident" means an individual who has been admitted, but not discharged, from the a facility.

(5866) "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.

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

(5968) "Restorative Services" or "Restorative Nursing" means those the measures provided by nursing staff and directed toward re-establishing and maintaining the a residents' fullest potential.

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

(6070) "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 the a resident's independence.

(6471) "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 shall 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 that they are not entitled to make on behalf of a resident.

(6272) "Suspected Abuse" means reasonable cause to believe that abuse may have occurred.

Stat. Auth.: ORS 410.070, 441.055, 441.615 & 441.637

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637 & 441.650

### **411-085-0210 Facility Policies**

(1) POLICIES REQUIRED. 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 and the collection of medical and forensic evidence that must be obtained within 86 hours of the incident;

- | (ij) Activities;
- | (jk) Social services;
- | (kl) Clinical records;
- | (lm) Infection control;
- | (mn) Diagnostic services;
- | (no) Oral care and dental services;
- | (op) Accident prevention and reporting of incidents;
- | (pq) Housekeeping services and preventive maintenance;
- | (qr) Employee orientation and inservice;
- | (rs) Laundry services;
- | (st) Possession of firearms and ammunition;
- | (tu) Consultant services;
- | (uv) Resident grievances; and
- | (vw) Facility closure. The administrator must assure compliance with 42 CFR 483.75(s) and OAR 411-085-0025.

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

Stat. Auth.: ORS 410.070, 441.055, & 441.615  
Stats. Implemented: ORS 441.055 & 441.615