(5) REDUCED PAYMENT FOR ABUSE.

(a) If abuse of a resident, according to the provisions of ORS 441.630 to 441.685, is substantiated by the Department, the Department may reduce the payment for the resident(s) for the month the abuse occurred, and until such time as the Department determines the conditions leading to the abuse have been corrected.

(A) The facility will receive payment for services provided for the resident as determined by the Department. This determination will be based on the absence of appropriate services that resulted in the substantiated abuse of a resident.

(B) The reduced payment may not be considered a reduction in benefits for the resident.

(b) The Department will notify the facility by certified mail at least 15 days prior to taking action to reduce payment.

(A) The notice will include the basis of the Department decision, the effective date of the reduced payment, and will advise the facility of their right to request review by the Assistant Director if such request is made in writing within 30 days of the receipt of the notice.

(B) If a request for review is made, the Assistant Director will include the basis of the Department decision, the effective date of the reduced review and all material relating to the allegation of resident abuse and to the reduction in payment. The Assistant Director will include the basis of the Department decision, the effective date of the reduced determination, based upon review of the material, whether or not to sustain the decision to reduce payments to the facility and will notify the facility of the decision within 20 days of receiving the request for review.

(C) If the Assistant Director determines not to sustain the decision to reduce payments, the reduction will be lifted immediately. Otherwise, the reduction in payment will remain in effect until the Department determines the conditions leading to the abuse have been corrected.

(D) If the decision to reduce payment is sustained, the payment reduction will not be recovered in the year end settlement.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 414.065 Stats. Implemented: ORS 410.070 & 414.065 Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0070 by Ch. 184, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 22008, f. 2-29-08, cert. ef. 3-1-08

(3) PROHIBITION OF EMPLOYMENT. The facility must not employ or retain in employment any of the following:
(a) Any person found responsible for abusing, neglecting or mistreating a person receiving long-term care services in a final administrative action that is not under appeal or in a court of law;
(b) Any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150; or
(c) Any person who is known or reasonably should be known to the facility to be abusive or to have been abusive.

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 – 411-085-0350. Each resident and the resident’s legal representative, as appropriate, have the right to:
(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.

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...(19) Be free of retaliation. After the resident, or the resident’s legal representative, has exercised rights provided by law or rule, neither the facility nor any person subject to the supervision, direction, or control of the facility may 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.

411-085-0360 Abuse
(1) ABUSE IS PROHIBITED. The facility employees, agents and licensee must not permit, aid, or engage in abuse of residents under their care.

(2) REPORTERS AND MANDATORY REPORTERS. All persons are encouraged to report abuse and suspected abuse. The following persons are required to immediately report abuse and suspected abuse to The Department or law enforcement agency;
(a) Physicians, including any resident physician or intern;
(b) Licensed practical nurse or registered nurse;
(c) Employee of the Oregon Department of Human Services, Area Agency on Aging, county health department or community mental health program;
(d) Nursing facility employee or any individual who contracts to provide services in a nursing facility;
(e) Peace officer;
(f) Clergy;
(g) Licensed social worker;
(h) Physical, speech or occupational therapist; and
(i) Family member of a resident or guardian or legal counsel for a resident.

(3) FACILITY REPORTING OF ABUSE OR SUSPECTED ABUSE.
(a) The nursing facility administration must immediately notify The Department, local
designee of The Department, or local law enforcement agency of any incident of abuse or suspected abuse. Physical injury of an unknown cause must be reported to The Department as suspected abuse, unless an immediate facility investigation reasonably concludes the physical injury is not the result of abuse.
(b) The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (for example; rape; murder, assault, burglary, kidnapping, theft of controlled substances).
(c) The local law enforcement agency must be called if the offices of The Department or designee are closed and there are no arrangements for after hours investigation.

(4) ABUSE COMPLAINT. The oral or written abuse complaint must include the following information when available;
(a) Names, addresses and phone numbers of alleged perpetrator(s), resident(s) and witness(es);
(b) The nature and extent of the abuse or suspected abuse (including any evidence of previous abuse);
(c) Any explanation given for the abuse or suspected abuse; and
(d) Any other information that the person making the report believes might be helpful in establishing the circumstances surrounding the abuse and the identity of the perpetrator.

(5) PRIVILEGE. In the case of abuse of a resident, the physician-patient privilege, the husband-wife privilege, and the privileges extended under ORS 40.225 to 40.295 will not be a ground for excluding evidence regarding the abuse, or the cause thereof, in any judicial proceeding resulting from an abuse complaint made pursuant to this section.

(6) IMMUNITY AND PROHIBITION OF RETALIATION.
(a) The facility licensee, employees and agents must not retaliate in any way against anyone who participates in the making of an abuse complaint, including but not limited to restricting otherwise lawful access to the facility or to any resident, or, if an employee, to dismissal or harassment;
(b) The facility licensee, employee and agents must not retaliate against any resident who is alleged to be a victim of abuse.
(c) Anyone who, in good faith, reports abuse or suspected abuse will have immunity from any liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint. Any such person will have the same immunity with respect to participating in judicial or administrative proceedings relating to the complaint.

(7) INVESTIGATION BY FACILITY. In addition to immediately reporting abuse or suspected abuse to The Department or law enforcement agency, the facility must promptly investigate all reports of abuse and suspected abuse and must take measures necessary to protect residents from abuse and prevent recurrence of abuse.


411-086-0130 Nursing Services: Notification
(2) Notification of Division. The nursing care staff shall notify the Division of any situation in which the health or safety of the resident(s) was/is endangered such as:
(a) Suspected abuse;
(b) Fire;
(c) Lost resident;
(d) Accidental or unusual death.

411-086-0140 Nursing Services: Problem Resolution and Preventive Care

...[3] Restraints. The licensee shall ensure that, except when required in an emergency, physical and chemical restraints are only applied in accordance with the resident’s care plan. Restraints may be used only to ensure the physical safety of the resident or other residents:
(a) Freedom of Choice. When restraints are considered in the interdisciplinary care planning conference to reduce the risk of injury related to falls, the resident or his/her legal guardian or person acting under the resident’s power of attorney for health care must be informed of the potential risks of falling and the risks associated with restraints;
(b) Physician Orders Required. Except as provided in subsection (3)(c) of this rule, physical and chemical restraints may be applied only when a physician orders restraints. An order for restraints must clearly identify the reason for the restraints and the duration and circumstances under which they are to be applied;
(c) Emergencies. In an emergency situation, a registered nurse may use physical restraints without physician orders if necessary to prevent injury to the resident or to other residents and when alternative measures do not work. If restraints are used in an emergency situation, the registered nurse shall document in the resident’s clinical record the use of restraints and what alternative measures did not work. A licensed nurse shall contact the physician for restraint orders within 12 hours of application;
(d) Re-evaluation. Whenever restraints are used, circumstances requiring the restraints and the need must be continually re-evaluated and documented in the clinical record;
(e) Staff Convenience/Discipline. Restraints shall not be used for discipline or staff convenience;
(f) Periodic Release. Residents who are physically restrained must have the restraints released at least every two hours for a minimum of ten minutes and be repositioned, exercised or provided range of motion during this period;
(g) Toileting. Toileting and incontinence care shall be provided when necessary;
(h) Quick Release. All physical restraints must allow for quick release. Locked restraints may not be used;
(i) Fixed Objects. Residents shall not be physically restrained to a fixed object.

(4) Documentation. All preventive measures taken by the facility staff shall be clearly documented. Such documentation shall include assessment of resident(s) at risk, preventive measures taken, results and evaluation of measures taken, and revision of measures as appropriate.

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93