Chapter 410

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Senior and Disability Services

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SERVICES FOR SENIORS AND PEOPLE WITH DISABILITIES

(Generally)

410.010 State policy for seniors and people with disabilities. (1) The Legislative Assembly finds and declares that, in keeping with the traditional concept of the inherent dignity of the individual in our democratic society, the older citizens of this state are entitled to enjoy their later years in health, honor and dignity, and citizens with disabilities are entitled to live lives of maximum freedom and independence.

(2) The Legislative Assembly declares that the policy of this state is to provide and encourage programs necessary to fulfill the commitment stated in subsection (1) of this section and that the purpose of policies stated in this section and ORS 410.020 is to provide a guide for the establishment and implementation of programs for older citizens and citizens with disabilities in this state. It further declares that the programs shall be initiated, promoted and developed through:

(a) Volunteers and volunteer groups;

(b) Partnership with local governmental agencies;

(c) Coordinated efforts of state agencies;

(d) Coordination and cooperation with federal programs;

(e) Partnership with private health and social service agencies;

(f) A designated state agency that will encourage and work with older citizens and their organizations, that will coordinate state and local programs, that will encourage and monitor federal programs and that will act as an advocate for older Oregon citizens; and

(g) A designated state agency that will encourage and work with citizens with disabilities and their organizations, that will coordinate state and local programs, that will encourage and monitor federal programs and that will act as an advocate for Oregon citizens with disabilities.

(3) The Legislative Assembly declares that it shall be the policy of this state to give special attention to the special concerns of our most frail and vulnerable older citizens. Furthermore, it shall be the policy of this state to support strongly the full development and participation of citizens with disabilities in all aspects of social, political and community life.

(4) Recognizing the diversity in geography, economy and life styles in Oregon and the diversity of local senior citizen networks, the Legislative Assembly declares that it is the policy of this state to avoid complete uniformity in planning and administering programs for older citizens and to encourage and emphasize local control to achieve the most effective blend of state and local authority, not precluding the ability of the state to perform its mandated responsibilities for planning and administration. Multipurpose senior centers may be considered as focal points for the delivery of services to older citizens in each community where practicable. Disability services should also be consolidated where possible to provide efficient and convenient delivery of services to citizens with disabilities. [1981 c.191 §1; 1985 c.180 §1; 1989 c.224 §70; 2007 c.70 §163]

410.020 Implementation of state policy. In carrying out the policies stated in ORS 410.010, the state shall:

(1) Coordinate the effective and efficient provision of community services to older citizens and citizens with disabilities so that the services will be readily available to the greatest number over the widest geographic area; assure that information on these services is available in each locality, utilizing whenever possible existing information services; and assure that each new service receives maximum publicity at the time it is initiated.

(2) Assure that older citizens and citizens with disabilities retain the right of free choice in planning and managing their lives; by increasing the number of options in life styles available to older citizens and citizens with disabilities; by aiding older citizens and citizens with disabilities to help themselves; by strengthening the natural support system of family, friends and neighbors to further self-care and independent living; by assuring that older citizens and citizens with disabilities are able to make informed choices regarding the delivery of in-home care services by providing information about their responsibilities as employers of in-home care providers or, alternatively, about the responsibilities of an in-home care agency to provide services; and by encouraging all programs that seek to maximize self-care and independent living within the mainstream of life.

(3) Assure that health and social services be available that:

(a) Allow the older citizen and citizen with a disability to live independently at home or with others as long as the citizen desires without requiring inappropriate or premature institutionalization.

(b) Encourage, by expansion of existing programs for older citizens and citizens with disabilities, by school programs, by meals-on-wheels, by counseling or by other means, public and private development of nutrition programs for older citizens and citizens with disabilities that prevent or minimize illness or social isolation.

(c) Assure that if institutionalization is necessary, the institution should be of the highest quality where the older citizen and citizen with a disability may live in dignity.

(d) Protect the older citizen and citizen with a disability from physical and mental abuse and from fraudulent practices.

(4) Foster both preventive and primary health care, including mental and physical health care, to keep older citizens and citizens with disabilities active and contributing members of society; and encourage full restorative services for those older citizens and citizens with disabilities who require institutional care to increase the possibility of their return to independent living.

(5) Encourage public and private development of suitable housing for older citizens and citizens with disabilities, designed and located consistent with their special needs and available at costs they can afford.

(6) In implementing subsections (1) to (5) of this section, develop and seek support for plans to assure access to information, counseling and screening, as appropriate, by persons potentially in need of long term care without regard to the person's income.

(7) Recognize the necessity for a variety of ways to help older citizens and citizens with disabilities maintain sufficient income to meet their needs.

(8) Encourage local transportation systems and volunteer groups to meet the daily transportation needs of older citizens and citizens with disabilities and to make accessible to them a broad range of services and programs, including social, health and religious services and programs.

(9) Encourage and develop meaningful employment opportunities for older citizens and citizens with disabilities in positions commensurate with their abilities; eliminate discrimination to such employment; and whenever possible, employ older citizens in programs that affect older citizens and citizens with disabilities in programs that affect citizens with disabilities.

(10) Involve older citizens and citizens with disabilities in the decision-making process for programs affecting their lives. Recognizing the ability of older citizens and citizens with disabilities to be advisors to the Legislative Assembly, agencies and professional staff, the Legislative Assembly intends that whenever possible older citizens and citizens with disabilities should assist in the development of policies affecting their lives.

(11) Assure to older citizens and citizens with disabilities the right to pursue activities within the widest range of civic, cultural, entertainment and recreational opportunities by opening such opportunities to participation by older citizens and citizens with disabilities, by encouraging older citizens and citizens with disabilities to utilize their capabilities by participating in government and by assuring them the right to serve.

(12) Make public educational facilities available to older citizens and citizens with disabilities and their organizations so older citizens and citizens with disabilities may pursue their educational interests; and encourage all institutions of learning and other appropriate agencies to develop and provide by outreach as well as by traditional means special education programs to meet the needs and interests of older citizens by addressing the problems and opportunities of aging and by responding to older citizens' interests in liberal arts as well as their interests in hobby and recreation courses.

(13) Encourage the development of barrier-free construction and the removal of architectural barriers so that more facilities are accessible to older citizens and citizens with disabilities.

(14) Promote development of programs to educate persons who work with older citizens in gerontology and geriatrics and encourage qualified persons to seek such education.

(15) Encourage immediate application by both public and private agencies of knowledge acquired from research that can sustain and improve the health and happiness of older citizens and citizens with disabilities.

(16) Recognize that older citizens who retire should be able to do so in honor and dignity.

(17) Encourage and support:

(a) Distribution of literature which accurately presents facts concerning aging and disabilities of citizens.

(b) Efforts of schools, churches and other institutions, in teaching children and youth about the process of aging and disabilities of citizens so as to correct fallacies handed down from one generation to another.

(c) Intergenerational programming and participation by community organizations and institutions to promote better understanding and warm social interaction and to counteract the tendency to isolation of individuals who are elderly or who have disabilities.

(d) Correction of stereotyping of individuals who are elderly or who have disabilities in school texts and other books, newspapers, magazines, radio and television by encouraging review and analysis of these media by publishers, company ownership or other appropriate agencies.

(e) Efforts which show that many misconceptions and stereotypes have no basis in fact so older citizens and citizens with disabilities will be freed from the destructive tendency to socially conform by embracing these fallacies. [1981 c.191 §2; 1983 c.312 §2; 1985 c.180 §2; 1989 c.224 §71; 2007 c.70 §164; 2007 c.416 §1]

410.030 Legislative findings on long term care options. The Legislative Assembly of the State of Oregon finds the following regarding older citizens and citizens with disabilities:

(1) That there are many older Oregonians and Oregonians with disabilities who face difficulties in maintaining self-care and independent living within the mainstream of life, and who have not yet exhausted their financial resources. These persons are often dependent upon providers of care for advice regarding 24-hour care. These persons and providers are not always aware of options to, or within, such care;

(2) That inappropriate or premature institutionalization of persons who have not exhausted their financial resources often leads to exhaustion of those resources, and to the expectation by these persons and providers that continued financing of inappropriate institutional care shall be available under Title XIX. However, under these circumstances, transfer of the person to appropriate, less costly noninstitutional or alternative institutional care, if available, is necessary in order that limited public funds can be utilized to provide appropriate care to as many persons in need as possible; and

(3) That to minimize the need for such disruptive transfers, it is in the interest of older Oregonians and Oregonians with disabilities and of providers of care that the Department of Human Services, or any designated state agency, develop plans for assuring access to information, counseling and screening, as appropriate, by persons potentially in need of long term care without regard to the person's income. [1983 c.312 §1; 1985 c.180 §3; 1989 c.224 §72; 2007 c.70 §165]

410.040 Definitions for ORS 410.040 to 410.300, 410.320 and 411.159. As used in ORS 409.010, 410.040 to 410.300, 410.320 and 411.159:

(1) "Appropriate living arrangement" means any arrangement for an elderly person or a person with a disability in a residential setting which is appropriate for the person considering, in order of priority, the following criteria:

(a) The desires and goals of the person;

(b) The right of the person to live as independently as possible, in the least restrictive environment; and

(c) The cost of the living arrangement compared to other types of living arrangements, based on the criteria in paragraphs (a) and (b) of this subsection.

(2) "Area agency" means:

(a) An established or proposed type A or type B Area Agency on Aging within a planning and service area designated under Section 305 of the Older Americans Act; or

(b) Any public or nonprofit private agency which is designated as a type A or type B Area Agency on Aging under Section 305 of the Older Americans Act.

(3) "Area agency board" means the local policy-making board which directs the actions of the area agency within state and federal laws and regulations.

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

(5) "Elderly person" means a person who is served by a type A area agency or type B area agency or by the department and who is 60 years of age or older.

(6) "Local government" means a political subdivision of the state whose authority is general or a combination of units of general purpose local governments.

(7) "Person with a disability" means a person with a physical or mental impairment that substantially limits one or more major life activities.

(8) "Preadmission screening" means a professional program within the department or type B area agencies, with staff that includes registered nurses and social workers, that assesses the needs of clients and recommends appropriate placements in residential programs administered by the department or type B area agencies.

(9) "Protective services" means a service to be provided by the department directly or through type B area agencies, in response to the need for protection from harm or neglect to elderly persons and persons with disabilities.

(10) "Title XIX" means long term care and health services programs funded by Title XIX of the Social Security Act available to elderly persons and persons with disabilities.

(11) "Type A area agency" means an area agency:

(a) For which either the local government or the area agency board does not agree to accept local administrative responsibility for Title XIX; and

(b) That provides a service to elderly persons.

(12) "Type B area agency" means an area agency:

(a) For which the local government agrees to accept local administrative responsibility for Title XIX;

(b) That provides a service to elderly persons or to elderly persons and persons with disabilities who require services similar to those required by elderly persons; and

(c) That uses the term "disabled services" or "disability services" in its title to communicate the fact that it provides services to both populations described in paragraph (b) of this subsection. [1981 c.784 §1; 1985 c.180 §4; 1989 c.224 §73; 1993 c.116 §2; 2001 c.900 §75; 2007 c.70 §166; 2011 c.36 §1; 2011 c.658 §37; 2011 c.720 §82]

410.050 General policy. (1) The State of Oregon finds:

(a) That the needs of the elderly population can be best served and planned for at the local community level;

(b) That a longer life expectancy and a growing elderly population demands services be provided in a coordinated manner and a single local agency system for such services be instituted;

(c) That local resources and volunteer help will augment state funds and needed personnel;

(d) That local flexibility in providing services should be encouraged; and

(e) That a single state agency should regulate and provide leadership to ensure that the elderly citizens of Oregon will receive the necessary care and services at the least cost and in the least confining situation.

(2) The State of Oregon further finds that within budgetary constraints, it is appropriate that savings in nursing home services allocations within a planning and service area be reallocated to alternative care services under Title XIX and Oregon Project Independence in that area. [1981 c.784 §2; 1993 c.116 §3; 2005 c.22 §272]

410.060 Policy for persons with disabilities served by department. (1) It is the policy of the State of Oregon that persons with disabilities served by the Department of Human Services shall also receive necessary services, as appropriate for their needs, from other state agencies.

(2) In carrying out the provisions in subsection (1) of this section, the Department of Human Services shall negotiate interagency agreements and coordinate services with the Employment Department and the Department of Education for the provision of appropriate services to clients of the Department of Human Services who have disabilities.

(3)(a) Prior to approval of an appropriate living arrangement, as defined in ORS 410.040, administered by the Department of Human Services, all persons with disabilities shall be assessed by preadmission screening to ensure the appropriateness of the living arrangement.

(b) If a person with a disability is diagnosed as, or is reasonably believed to be, a person with a developmental disability, preadmission screening shall include an assessment by the Developmental Disability Diagnosis and Evaluation Service established under ORS 427.104.

(4) The Department of Human Services in coordination with the Department of Education shall work with nursing homes that have one or more residents under 18 years of age to develop a program appropriate to the needs of those residents. [1981 c.784 §4; 1985 c.180 §5; 1989 c.224 §74; 2001 c.900 §76; 2007 c.70 §167; 2011 c.658 §38]

Note: Section 1, chapter 37, Oregon Laws 2008, provides:

Sec. 1. (1) The Department of Human Services shall develop a comprehensive plan for Oregon's long term care system for seniors and persons with physical disabilities.

(2) In developing the comprehensive plan, the department shall work with stakeholders, advocates for seniors and advocates for persons with physical disabilities.

(3) The comprehensive plan must include recommendations for:

(a) Improving the long term care system in Oregon;

(b) Improving access by seniors and persons with physical disabilities to services in the least restrictive long term care settings;

(c) Obtaining any Medicaid waivers that may be required; and

(d) Creating a reimbursement structure that ensures access to services while controlling costs and maintaining quality care by:

(A) Reexamining client acuity and appropriate service priority level designations;

(B) Developing reimbursement rates that are reasonably competitive with rates paid by private payers;

(C) Creating incentives for providers to participate in the state medical assistance program; and

(D) Addressing geographic differentials. [2008 c.37 §1]

(State Administration)

410.070 Duties of Department of Human Services; elderly persons and persons with disabilities; rules. (1) The Department of Human Services shall:

(a) Serve as the central state agency with primary responsibility for the planning, coordination, development and evaluation of policy, programs and services for elderly persons and persons with disabilities in Oregon.

(b) Function as the designated state unit on aging, as defined in the Older Americans Act of 1965.

(c) With the advice of the Governor's Commission on Senior Services and the Oregon Disabilities Commission, develop long-range state plans for programs, services and activities for elderly persons and persons with disabilities. State plans should be revised biennially and should be based on area agency plans, statewide priorities and state and federal requirements.

(d) Have the authority to transfer state and federal funds, except Title III of the Older Americans Act funds, from one area agency to another area agency or from one program or service to another program or service after consultation with the area agencies involved in the transfer. However, no area agency shall suffer a reduction in state or federal funds due to increased local funds.

(e) Receive and disburse all federal and state funds allocated to the department and solicit, accept and administer grants, including federal grants or gifts made to the department or to the state and enter into contracts with private entities for the purpose of providing or contracting for case management services for long term care insurance for the benefit of elderly persons and persons with disabilities in this state.

(f) Provide technical, training and program assistance to area agencies and assist them to provide such assistance to public and private agencies and organizations.

(g) Assist area agencies to stimulate more effective use of existing resources and services for elderly persons and develop programs, opportunities and services which are not otherwise provided for elderly persons, with the aim of developing a comprehensive and coordinated system for the delivery of social services to elderly persons.

(h) Assist local department offices and area agencies which have assumed responsibility for disabled services to stimulate more effective use of existing resources and to develop programs, opportunities and services which are not otherwise provided for persons with disabilities, with the aim of developing a comprehensive and coordinated system for the delivery of social services to persons with disabilities.

(i) Serve within government and in the state at large as an advocate for elderly persons and persons with disabilities by holding hearings and conducting studies or investigations concerning matters affecting the health, safety and welfare of elderly persons and persons with disabilities and by assisting elderly persons and persons with disabilities to assure their rights to apply for and receive services and to be given fair hearings when such services are denied.

(j) Process fiscal and client data for all area agencies.

(k) Conduct regulatory functions with regard to program operation, by adopting rules for providing social services, including protective services, to elderly persons and persons with disabilities who need services that the department or area agencies are authorized to provide and rules for standard rate setting and quality assurance.

(L) Provide information and technical assistance to the Governor's Commission on Senior Services, the Oregon Disabilities Commission and the Medicaid Long Term Care Quality and Reimbursement Advisory Council and keep the commissions and the council continually informed of the activities of the department.

(m) Make recommendations for legislative action to the Governor and to the Legislative Assembly, after consultation with the Governor's Commission on Senior Services, the Oregon Disabilities Commission and the Medicaid Long Term Care Quality and Reimbursement Advisory Council.

(n) Conduct research and other appropriate activities to determine the needs of elderly persons and persons with disabilities in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons and persons with disabilities to meet those needs.

(o) Maintain a clearinghouse for information related to the needs and interests of elderly persons and persons with disabilities.

(p) Provide area agencies with assistance in applying for federal, state and private grants and identifying new funding sources.

(2) In addition to the requirements of subsection (1) of this section, the department shall:

(a) Determine type A and type B area agencies annual budget levels for Oregon Project Independence and Title III of the Older Americans Act expenditures.

(b) Determine annual budget levels for planning and administering programs relating to social, health, independent living and protective services for persons with disabilities for the local department office serving elderly persons and persons with disabilities and type B area agencies that have assumed local responsibility for the programs and clients transferred under section 2 (2), chapter 787, Oregon Laws 1989. In determining the budget levels, the department shall:

(A) Apply the methodology required by ORS 410.072;

(B) Retain contingency reserves against overruns and transfers in use of Title XIX funds; and

(C) Provide timely management information so the area agencies and the department's disability services units can manage Title XIX reimbursements within budgeted levels.

(c) Make payments for services within a central processing system for:

(A) A type A area agency, at the request of the agency, for Oregon Project Independence or Title III of the Older Americans Act expenditures, or both.

(B) A type B area agency, for Title XIX and Oregon Project Independence expenditures, and at the request of the agency, for Title III of the Older Americans Act expenditures.

(d) Assume program responsibility for Title XIX programs in areas served by type A area agencies and in areas where no area agency is designated.

(e) Assume planning and program responsibilities for persons with disabilities in areas served by type A area agencies, in areas served by type B agencies that serve only elderly persons and in areas where no area agency exists.

(3) When developing programs affecting elderly persons, the department shall consult with the Governor's Commission on Senior Services.

(4) When developing programs affecting persons with disabilities, the department shall consult with the Oregon Disabilities Commission. [1981 c.784 §3; 1989 c.224 §75; 1989 c.787 §1; 1991 c.122 §12; 1993 c.116 §4; 1995 c.667 §4; 2001 c.900 §77; 2007 c.70 §168; 2009 c.460 §1]

410.072 Determination of annual budget levels for type B area agencies; rules. The Department of Human Services shall:

(1) Adopt by rule a methodology for determining biennial budget levels for type B area agencies for planning and administering programs for elderly persons and persons with disabilities that:

(a) Includes both direct and indirect costs; and

(b) Results in a budget level for each type B area agency that is not less than 95 percent of the amount that would otherwise be budgeted for a local department office serving elderly persons and persons with disabilities;

(2) Determine biennial budget levels for planning and administering programs for elderly persons and persons with disabilities for type B area agencies using the methodology adopted under subsection (1) of this section; and

(3) Submit a budget request based on budget levels determined under this section to the Oregon Department of Administrative Services in accordance with ORS 291.201 to 291.222. [2003 c.772 §2; 2009 c.460 §2]

410.074 Consultation with representatives of type B area agencies on rules establishing methodology. Before adopting the rules described in ORS 410.072, the Department of Human Services shall consult with representatives of type B area agencies. [2003 c.772 §4]

Note: 410.074 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 410 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

410.075 Authority of department and Oregon Health Authority to hold title to property; rules. The Department of Human Services or the Oregon Health Authority may take title to real and personal property in performing its duties under ORS 411.630, 411.708, 411.795, 416.310 and 416.350. Title shall be taken in the name of the department or the authority. The department or the authority may convey the property by deed or other appropriate conveyance under procedures adopted by rule of the department or the authority. [1993 c.249 §2; 2005 c.381 §23; 2011 c.720 §83]

410.080 Department as single state agency for specified federal programs; authority as single state agency for Title XIX and Title XXI programs. (1) The Department of Human Services is the designated single state agency for all federal programs under ORS 409.010 and 410.040 to 410.300 except that the Oregon Health Authority is the single state agency responsible for supervising the administration of all programs funded by Title XIX or Title XXI of the Social Security Act as provided in ORS 413.032 (1)(j).

(2) Except as provided in ORS 410.070 (2)(d) and 410.100, the administration of services to clients under ORS 410.040 to 410.300 shall be through area agencies, and shall comply with all applicable federal regulations. [1981 c.784 §7; 2001 c.900 §246; 2005 c.22 §273; 2011 c.720 §84]

410.090 Department to implement supportive social services for persons age 60 and older; rules. (1) The Department of Human Services is directed to develop and place in effect a program of supportive social services for persons age 60 or older.

(2) The Department of Human Services is authorized to develop and adopt such rules as necessary for the sound, efficient and economical administration of the provisions of this section and ORS 410.320 to 410.340, including the implementation of a fee for

service schedule based upon ability to pay, and to assure that no eligible person, resident in a skilled nursing home or intermediate care facility, shall be removed and placed in an alternative care program unless such services are determined to be more appropriate for the individual citizen based upon appropriate, individual, service considerations. [Formerly 184.865]

410.100 When department to administer area agency programs. (1) In the event that a local government withdraws the designation of an area agency, or the Department of Human Services withdraws the area agency designation in accordance with the Older Americans Act, the department shall administer the services to clients previously performed by the area agency until a new area agency is designated.

(2) The department may withdraw any particular program or service, except Title III of the Older Americans Act programs, from the area agency, and administer such programs and services. Before such action is taken, the department must consult with the director of the area agency and the chief elected official of the affected local government. Such action shall be taken by the department only when it can be shown that the federal or state laws or rules have not been complied with, that state or federal funds are not being expended for the purposes for which they were intended, or that elderly persons are not receiving appropriate services within available resources. Withdrawal of any particular program or service is appealable to the Governor after requesting a reconsideration by the Director of Human Services. [1981 c.784 §10; 2001 c.900 §78; 2007 c.70 §169]

410.110 [1981 c.784 §24; repealed by 2011 c.720 §228]

410.120 Senior and Disabled Services Account. (1) There is established in the General Fund of the State Treasury an account to be known as the Senior and Disabled Services Account. All moneys in the Senior and Disabled Services Account are continuously appropriated for and shall be used by the Department of Human Services for the respective purposes authorized by law. The moneys in the Senior and Disabled Services Account and all appropriations for the Department of Human Services shall be subject to allotment made by the Oregon Department of Administrative Services.

(2) The Department of Human Services shall keep a record of all moneys credited to and deposited in the Senior and Disabled Services Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

(3) The unobligated balance in the Senior and Disabled Services Account on June 30 of each odd-numbered year shall be determined by the Department of Human Services as of September 30 following the close of each biennium and certified to the Oregon Department of Administrative Services. The amount certified pursuant to this subsection shall revert to the General Fund and become available for general governmental purposes. [1981 c.784 §25; 1989 c.787 §11]

410.125 [2005 c.690 §7; repealed by 2008 c.18 §16]

410.130 [1981 c.784 §26; repealed by 2001 c.900 §261]

410.140 Records; rules. The Department of Human Services shall make and enforce rules governing the custody, use and preservation of the records, papers, files and communications by any other agency or department of government or person to which the records may be furnished. Use shall be limited to the purposes for which the records are furnished and by the provisions of the law under which they may be furnished. [1981 c.784 §27]

410.150 Use of files; confidentiality; privileged communications. For the protection of applicants for and recipients of services, the Department of Human Services shall not disclose or use the contents of any records, files, papers or communications for purposes other than those directly connected with the administration of the laws of Oregon, and these records, files, papers and communications are considered confidential subject to the rules of the Department of Human Services, except as otherwise provided in ORS 411.320. In any judicial proceedings, except proceedings directly connected with the administration of public assistance laws, their contents are considered privileged communications. [1981 c.784 §28; 1997 c.581 §2]

410.160 Limitation on estate claims. Nothing in ORS 409.010 and 410.040 to 410.300 extends estate claims requirements and procedures related to certain Title XIX services under current Oregon statutes and federal regulations to other services. [1981 c.784 §36; 1993 c.116 §5; 2005 c.22 §274; 2011 c.720 §85]

410.180 Long term care reimbursement audit manual. In carrying out the reimbursement system stated in the state policy on long term care reimbursement, the Department of Human Services shall develop, publish and make available an audit manual. The audit manual shall include clear guidelines on costs that are approved for reimbursement. [1983 c.406 §2]

Note: 410.180 and 410.190 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 410 but not to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

410.190 Representation of corporation in contested case proceedings before department. (1) Notwithstanding ORS 8.690, 9.160, 9.320, ORS chapter 180, ORS 203.145 or other law, in any contested case proceeding before the Department of Human Services, a corporation may be represented by an attorney or by any officer or authorized agent or employee of the corporation.

(2) As used in this section, "corporation" includes a public or private corporation, whether or not organized for profit. [1987 c.428 §34b]

Note: See note under 410.180.

(Area Agencies)

410.210 Area agency advisory councils; membership; duties. (1)(a) Each area agency shall have an area agency advisory council, with members appointed by the area agency board.

(b) For a type A area agency, membership of the council shall include consumers of services provided primarily to elderly persons under Department of Human Services programs, including low income and minority persons.

(c) A type B area agency that serves elderly persons and persons with disabilities shall have two advisory councils. One shall include persons described in paragraph (b) of this subsection. The second shall be a disability services advisory council. That council shall have as a majority of its members persons with disabilities and shall include consumers of services and other interested persons. Any disability services advisory council in existence at the time the area agency assumes responsibility for providing services to persons with disabilities shall become the disability services advisory council for the area agency.

(2) Each area agency advisory council shall:

(a) Recommend basic policy guidelines for the administration of the activities of the area agencies on behalf of elderly persons or persons with disabilities, and advise the area agency on questions of policy.

(b) Advise the area agency with respect to development of the area plan and budget, and review and comment on the completed area plan and budget before its transmittal to the Director of Human Services.

(c) Review and evaluate the effectiveness of the area agency in meeting the needs of elderly persons or persons with disabilities in the planning and service area.

(d) Meet at least quarterly. The meetings are subject to ORS 192.610 to 192.690. [1981 c.784 §11; 1989 c.224 §76; 1991 c.67 §101; 1993 c.116 §1; 2001 c.900 §79; 2007 c.70 §170; 2011 c.9 §52]

410.220 Use of state and local resources. Each area agency may use, with the consent of state and municipal departments and agencies, their services, equipment, facilities and personnel, and pay therefor, within the limits of its resources, as agreed between the agencies and cooperate with other public and private agencies as to the use of services, equipment and facilities. [1981 c.784 §14]

410.230 Expenditure of local funds not required. Nothing in ORS 409.010 and 410.040 to 410.300 requires an area agency or local governmental unit to expend local funds for the purpose of maintaining or expanding services to elderly persons and persons with disabilities. [1981 c.784 §37; 1989 c.224 §77; 2005 c.22 §275; 2007 c.70 §171; 2011 c.720 §86]

(Type A Agencies)

410.240 Operation of type A agencies. On and after October 1, 1981, a type A area agency shall operate in the same manner as it operated with local administrative responsibility for Title III of the Older Americans Act and Oregon Project Independence before October 1, 1981. Nothing in ORS 409.010 and 410.040 to 410.300 requires a type A area agency to become a type B area agency. [1981 c.784 §8; 2005 c.22 §276; 2011 c.720 §87]

410.250 Duties of type A agencies. Each type A area agency shall:

(1) Conduct local planning functions for Title III of the Older Americans Act and Oregon Project Independence.

(2) Develop a local plan for service delivery that complies with federal and state requirements and is in accord with locally determined objectives consistent with the state policy on aging. This plan shall be reviewed and approved by the Department of Human Services.

(3) Assess the needs of elderly persons within the planning and service delivery area for service for social and health services, and determine what resources are currently available to meet those needs.

(4) Assume the responsibility of determining services required to meet the needs of elderly persons, assure that such services are provided within the resources available and determine when such services are no longer needed.

(5) Endeavor to coordinate and expand existing resources in order to develop within its planning and service area a comprehensive and coordinated system for the delivery of social and health services to elderly persons.

(6) Serve as an advocate within government and within the community at large for

the interests of elderly persons within its planning and service area.

(7) Make grants to or enter into contracts with any public or private agency for the provision of social or health services not otherwise sufficiently available to elderly persons within the planning and service area.

(8) Monitor and evaluate the activities of its service providers to insure that the services being provided comply with the terms of the grant or contract. Where a provider is found to be in breach of the terms of its grant or contract, the area agency shall enforce the terms of the grant or contract.

(9) Conduct research, evaluation, demonstration or training activities appropriate to the achievement of the goal of improving the quality of life for elderly persons within its planning and service area.

(10) Comply with department requirements that have been developed in consultation with the area agencies for client and fiscal information and provide to the department information necessary for federal and state reporting, program evaluation, program management, fiscal control and research needs. [1981 c.784 §12]

(Type B Agencies)

410.270 Operation of type B agencies. (1) A local government shall be responsible for all actions of a type B area agency in its jurisdiction, including but not limited to the accountability for funds and compliance with federal and state laws and rules. Such responsibility shall include all geographic areas in which the type B area agency is designated to operate.

(2) The respective local government shall appoint a director of the type B area agency in its jurisdiction who must meet minimum qualifications established by the Department of Human Services. The director shall serve with the continuing approval of the Director of Human Services. Continuing approval may be withdrawn by the Director of Human Services only when it can be shown that the state or federal rules have not been complied with by the type B area agency, that state or federal funds are not being expended for the purposes for which they were intended or that elderly persons are not receiving appropriate services within available funds. Withdrawal of continuing approval is appealable to the Governor by the local government after requesting a reconsideration by the Director of Human Services. [1981 c.784 §9; 1991 c.67 §102; 2001 c.900 §80; 2007 c.70 §172]

410.280 Duties of type B agencies. Each type B area agency shall:

(1) Comply with the provisions of ORS 410.250 (1) and (3) to (10).

(2) Conduct local planning functions for Title XIX of the Social Security Act.

(3) Develop a local plan for service delivery subject to review and approval by the Department of Human Services and the responsible unit of local government that complies with federal and state requirements and in accord with locally determined objectives consistent with the state policy on aging.

(4) Provide protective services within available resources. [1981 c.784 §13; 1993 c.116 §6]

410.290 Conditions for designation as type B agency; plan of operation. (1) Prior to the designation of an area agency as a type B area agency, the area agency, the responsible unit of local government and the Department of Human Services must jointly agree upon a plan under which the area agency will operate.

(2) The plan described in subsection (1) of this section shall:

(a) Establish an administrative structure and qualifications for key personnel that reflect the population to be served.

(b) Be developed in coordination with the appropriate local mental health authority.

(c) Include any necessary interagency agreements regarding which agency is to have responsibility for each specific group of clients under 60 years of age.

(d) Address necessary transfers of staff, available equipment and administrative and service funds.

(e) Be prepared with the participation of potentially affected clients, staff and other individuals at the local level, including but not limited to individuals with physical disabilities. [1981 c.784 §16; 1989 c.224 §78; 2007 c.70 §173]

410.295 Authority of type B agency to regulate adult foster homes. (1) The Director of Human Services may delegate the following functions pertaining to regulation of adult foster homes for elderly persons and persons with disabilities to a type B area agency:

(a) Conducting inspections and issuing and renewing licenses under ORS 443.735;

(b) Investigating complaints under ORS 443.765; and

(c) Other regulatory functions designated by the director by rule.

(2) This section does not apply to adult foster homes in counties that have been granted an exemption under ORS 443.780.

(3) As used in this section, "adult foster home" has the meaning given that term in ORS 443.705. [2005 c.219 §2; 2007 c.70 §174]

410.300 Transfer of state employees to type B agency; conditions. (1) A type B area agency may contract with the Department of Human Services for services of state employees or have such employees transferred to employment by the area agency by transfer agreement.

(2) State employees whose services have been contracted to a type B area agency shall be supervised for program purposes by the area agency.

(3) If state employees are transferred to a type B area agency, the provisions of ORS 236.610 to 236.640 shall apply.

(4) Prior to transfer of any state employee to any other public employer under ORS 410.040 to 410.300, at a date to be determined by the Director of Human Services, each type B area agency shall prepare a plan in coordination with local staff of the department for implementation of ORS 410.040 to 410.300. The plan shall show how statutory responsibilities are to be met and how all staff are to be utilized. [1981 c.784 §15; 1993 c.18 §98; 2001 c.900 §81; 2005 c.22 §277; 2011 c.720 §88]

GOVERNOR'S COMMISSION ON SENIOR SERVICES

410.320 Governor's Commission on Senior Services. (1) The Governor's Commission on Senior Services is created. The commission shall consist of at least 21 members appointed by the Governor for terms of three years.

(2) Prior to making appointments, the Governor shall request and consider recommendations from the area agencies on aging and other interested senior organizations. The Governor shall designate a member to serve at the pleasure of the Governor as chairperson for a term of two years with such duties as the Governor shall prescribe. The membership of the commission shall be composed of persons broadly representative of major public and private agencies who are experienced in or have demonstrated particular interest in the special needs of elderly persons, including persons who have been active in organizations and advocates on behalf of elderly persons. Additionally, membership shall include persons who are active in advocacy organizations representing the interests of persons with disabilities who are served in programs under the Department of Human Services and consumers of services provided primarily to elderly persons and persons with disabilities under department programs, including low income persons, minorities and persons with disabilities. At least a majority of members shall be 60 years of age or older.

(3) The Governor's Commission on Senior Services shall advise the Governor and the Director of Human Services on needs of elderly persons, and recommend actions by the Governor, the Department of Human Services, other governmental entities and the private sector, appropriate to meet such needs.

(4) The commission shall have authority to study programs and budgets of all state agencies that affect elderly persons. After such study, the commission shall make recommendations to the Governor and to the agencies involved. Such recommendations shall be designed to provide coordination of programs for elderly persons, to avoid unnecessary duplication in provision of services, and to point out gaps in provision of services. The commission shall also recommend development of a comprehensive plan for delivery of services to elderly persons. In carrying out these tasks, the commission shall coordinate its efforts with other advisory groups within the Department of Human Services to avoid duplication of effort.

(5) The commission shall promote responsible statewide advocacy for elderly persons.

(6) Members of the commission, other than legislators, shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 184.900; 1983 c.740 §130; 1989 c.224 §79; 1991 c.67 §103; 2001 c.900 §82; 2007 c.70 §175]

410.330 Legislator members; expenses. (1) In addition to the members of the Governor's Commission on Senior Services appointed under ORS 410.320, the President of the Senate shall appoint one member from the Senate and the Speaker of the House of Representatives shall appoint one member from the House of Representatives. If the Speaker of the House of Representatives or the President of the Senate is a member, either may designate from time to time an alternate from among the members of the appropriate house to exercise powers as a member of the commission except that the alternate shall not preside if the Speaker or President is chairperson.

(2) The members of the commission appointed under subsection (1) of this section shall be entitled to payment of compensation and expenses under ORS 171.072 from funds appropriated to the Legislative Assembly. [Formerly 184.905; 1983 c.740 §131; 1987 c.879 §15]

410.340 Appointments to fill vacancies. In case of a vacancy on the Governor's Commission on Senior Services, the appointing authority shall appoint a successor for the remainder of the unexpired term. [Formerly 184.910; 1983 c.740 §132]

OREGON PROJECT INDEPENDENCE

410.410 Definitions for ORS 410.410 to 410.480. As used in ORS 410.410 to 410.480:

(1) "Authorized agency" means any organization designated by the Department of Human Services as an area agency on aging.

(2) "Authorized service" means any service described in ORS 410.420 (1) and designated by the department by rule to be eligible for Oregon Project Independence funding.

(3) "Service provider" means any agency or program that provides one or more services described in ORS 410.420. [1981 c.186 §1; 1983 c.740 §133; 2011 c.201 §1]

410.420 Use of funds for specified services. (1) Funds appropriated for Oregon Project Independence shall be expended for home care supportive services including in-home or community-based services that assist an individual in achieving the greatest degree of independent functioning in the individual's home.

(2) Funds appropriated for Oregon Project Independence may be expended for the following services:

(a) Services to support community caregivers and strengthen the natural support system for seniors including, but not limited to:

(A) Information and assistance in accessing health and social services;

(B) Respite care;

(C) Training; and

(D) Counseling.

(b) Health promotion services including, but not limited to:

(A) Chronic disease management;

(B) Fall prevention activities;

(C) Nutrition counseling;

(D) Physical activities; and

(E) Medication management.

(c) Options counseling to provide individuals and their families with up-to-date, comprehensive, objective and easy to understand information about the full range of immediate and long range options that:

(A) Educates individuals and families about available community support options;

(B) Assesses the needs and resources of individuals and families;

(C) Assists individuals and families in developing and implementing informed and cost-effective decisions about long term support choices; and

(D) Provides intensive counseling for individuals at risk of unnecessary or premature nursing facility placement.

(d) Transportation options that allow individuals to live at home and access the full range of community resources. [1981 c.186 §2; 1983 c.740 §134; 2001 c.900 §83; 2011 c.201 §2]

410.422 Oregon Project Independence Fund. (1) The Oregon Project Independence Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Project Independence Fund shall be credited to the Oregon Project Independence Fund. Moneys in the Oregon Project Independence Fund at the end of a biennium are retained in the Oregon Project Independence Fund and do not revert to the General Fund.

(2) The Oregon Project Independence Fund consists of moneys appropriated to the fund by the Legislative Assembly, interest earned by the fund and moneys contributed to the fund by donors.

(3) Moneys in the Oregon Project Independence Fund are continuously appropriated to the Department of Human Services for the purpose of funding Oregon Project Independence as provided in ORS 410.410 to 410.480. [2005 c.749 §1; 2011 c.723 §18]

410.425 Separate accounts for persons age 60 and over and for persons with Alzheimer's disease or related disorders. Except as provided in ORS 410.422, the funds available for purposes of ORS 410.410 to 410.480 shall be kept in separate accounts in the General Fund. One account shall be used for funds appropriated for persons otherwise eligible who are 60 years of age or older. The other account shall be used for funds appropriated for persons otherwise eligible who have Alzheimer's disease or a related disorder. [1987 c.692 §3; 2005 c.749 §2]

410.430 Eligibility for authorized services. (1) In order to qualify for authorized services from an authorized agency or service provider, each client must:

(a) Be 60 years of age or older or have been diagnosed as having Alzheimer's disease or a related disorder;

(b) Not be receiving financial assistance from the Department of Human Services, except supplemental nutrition assistance and limited Medicare reimbursement benefits administered by the department; and

(c) Be assessed to be at the risk of entering an institution.

(2) Eligibility determination is required before any client may receive services from an authorized agency or service provider. [1981 c.186 §3; 1987 c.692 §1; 1997 c.581 §3; 1999 c.59 §105; 2001 c.900 §84; 2009 c.599 §17; 2011 c.201 §3]

410.435 Expansion of Oregon Project Independence; rules. (1) Notwithstanding ORS 410.430 and subject to the conditions

described in subsection (2) of this section, the Department of Human Services shall adopt rules expanding the eligibility requirements of Oregon Project Independence to cover persons 19 years of age or older with physical disabilities.

(2) The department may not adopt the rules expanding Oregon Project Independence described in subsection (1) of this section unless the amount of moneys in the Oregon Project Independence Fund established in ORS 410.422 is sufficient to provide services to eligible clients under ORS 410.410 to 410.480 and is sufficient to fund the expansion of the program to persons with physical disabilities.

(3) Rules adopted under subsection (1) of this section are valid only for the biennium in which the rules are adopted. [2005 c.749 §9; 2011 c.201 §4]

410.440 Priorities for services. (1) Eligible clients shall receive authorized services on a priority basis, with highest priorities receiving services first.

(2) Priority for receipt of authorized services shall be:

(a) Clients already receiving authorized service as long as their condition indicates services are needed.

(b) Clients who are to be placed immediately in an institution if needed authorized services are not provided.

(c) Clients who are probably to be placed in an institution if needed authorized services are not provided. [1981 c.186 §4]

410.450 Determinations of eligibility; rules. (1) Eligibility determinations and determinations of services for Oregon Project Independence shall be made in accordance with rules of the Department of Human Services.

(2) Eligibility for authorized services shall be based on each client's financial, physical, functional, medical and social need for such services.

(3) Clients who appear eligible for services provided by the department because of disability or age and income shall be encouraged to apply to the department for service. [1981 c.186 §5; 1983 c.740 §135; 2005 c.22 §278; 2011 c.201 §5]

410.460 Computation of allowable costs. Allowable costs by authorized agencies are those associated with the direct provision of services to clients and such administrative costs as may be required to assure adequate services and to provide information to the Department of Human Services. [1981 c.186 §6; 1983 c.740 §136]

410.470 Fees; collection; records; use. (1) The Department of Human Services shall establish fees for authorized services after consultation with authorized agencies. The fees may differ for different areas and for different income levels.

(2) Fees established under subsection (1) of this section shall be charged to all clients.

(3) A record of all fees collected under subsection (1) of this section shall be kept by each authorized agency and made available upon request to the department.

(4) The department may establish fees for services described in ORS 410.420 (2).

(5) Nothing prevents any client of Oregon Project Independence from making a contribution.

(6) Fees and any contribution must be used to expand services. [1981 c.186 §7; 1983 c.740 §137; 2005 c.749 §10; 2011 c.201 §6]

410.480 Required record keeping; audit. (1) Each authorized agency and service provider shall maintain books, records, documents and accounting procedures which reflect costs and such other activities as the Department of Human Services may require. The books, records and documents shall be made available to the department upon request.

(2) Each authorized agency shall submit to the department an audit of its financial records annually. Such audits shall be conducted by an individual holding a permit issued by the Oregon Board of Accountancy under ORS 673.010 to 673.457.

(3) Fiscal and program reports shall be completed on forms provided by the department and be submitted to the department by the specified due dates.

(4) The use or disclosure by any party of any information concerning a client receiving services described in ORS 410.420 for any purpose not directly connected with the administration of the responsibilities of the department, or an authorized agency or a service provider, is prohibited except with written consent of the recipient, or the legal representative thereof. [1981 c.186 §8; 1983 c.740 §138; 1999 c.322 §39; 2011 c.201 §7]

ADULT DAY CARE SERVICE

410.485 Legislative findings. The Legislative Assembly finds that there is a need for the Department of Human Services to promote the availability of adult day care services and that flexibility in the combination of adult day care with other community-based services gives individuals who would otherwise be placed in restrictive care settings a greater variety of choices. [1991 c.787 §1]

410.490 Duties of department; rules. (1) To provide greater flexibility and availability of services, the Department of Human Services shall apply for waiver of federal statutory and regulatory requirements to make adult day care services available under ORS chapter 414.

(2) The Department of Human Services shall adopt rules consistent with the rules adopted under ORS 410.495, that include a provision identifying adult day care as a service available for recipients eligible for medical assistance.

(3) As used in ORS 410.485 and this section, "adult day care" means community-based group programs designed to meet the needs of adults with functional or cognitive impairments through individual plans of care that are structured, comprehensive and provide a variety of health, social and related support services in protective settings during part of the day but provide less than 24-hour care. [1991 c.787 §§2,3; 2007 c.70 §176]

410.495 Registry for adult day care programs in state; rules. (1) The Department of Human Services shall develop a registry of all adult day care programs in Oregon.

(2) The department shall adopt rules, to be followed voluntarily, substantially consistent with standards established by the Oregon Association of Adult Day Care Services regarding adult day care programs. Each program in the registry shall indicate for inclusion in the registration data the extent to which the program agrees to operate in conformity with the rules adopted under this section.

(3) As used in this section, "adult day care" means a community-based group program designed to meet the needs of adults with functional or cognitive impairments through an individual plan of care. "Adult day care" means a structured, comprehensive program that provides a variety of health, social and related support services in a protective setting during part of a day but for less than 24 hours. [1991 c.788 §1; 2007 c.70 §177]

LONG TERM CARE

(Assessment of Needs)

410.505 Definitions for ORS 410.505 to 410.545. As used in ORS 410.505 to 410.545:

(1) "Admission assessment" means a professional program that provides an assessment of the long term care needs of persons applying for or considering admission to an intermediate care facility or who have remained in a skilled nursing facility for more than 30 days, and who are not or do not appear to be Medicaid eligible. The program includes providing information regarding appropriate service and placement alternatives, including nursing facilities and community-based options. The program includes all services necessary to comply with the minimum federal criteria for preadmission screening established by the Health Care Financing Administration under the Omnibus Budget Reconciliation Act of 1987. The admission assessment shall provide the applicant with appropriate options but the recommendation of the admission assessment team is not binding; the applicant has the right to choose from any options which are available.

(2) "Intermediate care facility" means a facility as defined in ORS 442.015 and which is Medicaid certified.

(3) "Skilled nursing facility" means a facility as defined in ORS 442.015 and which is Medicaid certified. [1989 c.912 §2]

410.510 Establishment of procedure for assessment. For reasons stated in ORS 410.030 (2), the Department of Human Services shall establish a procedure for assessment of the long term care needs of each person making application for admission to an intermediate care facility and for each person who remains in a skilled nursing facility for more than 30 days. [1989 c.912 §3]

410.515 Notice of availability of admission assessment services; disclosure form; department to provide services; maximum fees. (1) Prior to admission to an adult foster home, as defined in ORS 443.705, a residential care facility, as defined in ORS 443.400, an assisted living facility or a nursing facility that is not Medicaid certified, the person seeking admission shall be advised by the facility of the availability of admission assessment services at the person's own expense and shall sign a disclosure form indicating that the person has been so advised.

(2) The Department of Human Services shall establish a fee and provide assessment services to such persons upon request. The department shall establish a maximum fee that certified programs may charge such persons.

(3) Adult foster homes, residential care facilities, assisted living facilities and nursing facilities that are not Medicaid certified shall maintain a record of such disclosure forms and shall make them available to the department or area agencies on aging upon request. [1989 c.912 §10]

410.520 When assessment to occur; exceptions. (1) Subject to subsection (2) of this section, admission screening shall occur:

(a) Before admission to an intermediate care facility; and

(b) Within seven days following the 30th day from admission to a skilled nursing facility.

(2) Subsection (1) of this section does not apply for the following:

(a) Patients transferred from one facility to another providing the same level of care;

(b) Patients who are returning to an intermediate care facility after having entered acute care facilities from such facilities;

(c) Patients who are being admitted to an intermediate care facility for less than 30 days. If a patient is admitted under this paragraph and is to remain in the facility for more than 30 days, the patient shall receive an assessment within seven days following the 30th day from admission;

(d) Patients who must be admitted immediately to a nursing facility. Patients admitted under this paragraph shall receive an assessment within seven days of admission;

(e) Patients who are entering a nursing home that is part of a continuing care retirement community; and

(f) Patients discharged from an acute care facility who opt to receive assessment services beyond the minimum federal criteria from the Department of Human Services or an area agency on aging rather than from a certified program may receive these additional assessment services within seven days of admission. [1989 c.912 §4]

410.525 Disclosure of fees; waiver of assessment; additional assessment services. (1) If the admission assessment is performed by a certified program, the program shall disclose to the person receiving the assessment any portion of the fee that may be charged to that person, and shall inform the person of the right of the person to receive an assessment from the Department of Human Services or an area agency on aging at no charge.

(2) The department or area agencies on aging shall not charge any portion of the fee to the person receiving the assessment.

(3) Once the person or persons performing the assessment have met the minimum federal criteria, the person receiving the assessment shall have the option to receive additional assessment services and information regarding appropriate placement alternatives. The person shall sign a form to be developed by the department indicating the person's preference. [1989 c.912 §6]

410.530 Department authority; delegation; advisory committee; rules. (1) The Department of Human Services has the following authority which it may delegate to any program certified by the department to provide assessment services:

(a) To provide information and education to the general public, hospitals, nursing facilities and physicians regarding availability of the assessment program.

(b) To accept referrals from individuals, families, physicians, human service professionals, nursing home professionals, social service agencies or other organizations.

(c) To assess the long term care needs of referred persons.

(d) To identify available noninstitutional services to meet the needs of referred persons, including public and private case management services.

(e) To prepare, explain and document recommendations for persons receiving assessment program services as to the need for skilled nursing care, for intermediate care as provided in a facility or for other care which is available in the community.

(f) To inform referred persons of the extent to which home and community-based services are available, and of their right to choose among the appropriate alternatives that may be available, in consultation with an attending physician and a family member.

(g) To provide public education targeted at older persons, care givers and families regarding alternative long term care services.

(h) To determine and publish minimum qualifications for members of the admission assessment team.

(2)(a) After consultation with the committee appointed under subsection (3) of this section, the Department of Human Services shall adopt by rule criteria and procedures for certifying and decertifying public or private admission assessment programs and contracting with certified programs. The department shall establish a maximum fee that a certified program may charge for assessment services. The rules shall specify that a certified program may not charge the person receiving assessment services for any portion of the fee associated with the services necessary to meet the minimum federal criteria.

(b) In certifying a program, the department shall determine that the program includes:

(A) Adequately trained personnel;

(B) Information regarding appropriate service and placement alternatives, including nursing facilities and community-based options;

(C) Provisions to the applicant of information about appropriate options; and

(D) Prohibition of an assessment being provided by any certified program which has

any financial interest in the facility to which placement is recommended.

(c) The program shall not require the recommendation of the admission team be binding and the applicant has the right to choose from any options that are available.

(3) The Director of Human Services shall appoint an advisory committee to advise the department in certifying and decertifying programs that provide or fail to provide the service described in this section. The director shall appoint representatives from the Oregon Association of Hospitals, the Oregon Health Care Association, the Oregon Association of Homes for the Aging and representatives of organizations of seniors. [1989 c.912 §5; 1991 c.67 §104]

410.535 Rules. The Department of Human Services shall adopt rules to carry out the provisions of ORS 410.505 to 410.545, including, but not limited to:

(1) Granting exceptions to ORS 410.540; and

(2) Insuring confidentiality of all client information gathered during the admission assessment process. [1989 c.912 §8]

410.540 Compliance as condition for licensure. Compliance with the provisions of ORS 410.505 to 410.545 shall be a condition for licensure as a nursing facility. [1989 c.912 §7]

410.545 Implementation of ORS 410.505 to 410.545 requires federal funding. Implementation of ORS 410.505 to 410.545 is subject to federal fund participation of the admission assessment activities specified in ORS 410.510 to 410.530. [1989 c.912 §12]

(Advisory Council)

410.550 Medicaid Long Term Care Quality and Reimbursement Advisory Council; membership; duties. (1) The Medicaid Long Term Care Quality and Reimbursement Advisory Council is created, to consist of 12 members. Appointed members shall be residents of the State of Oregon and representative of the geographic locations of all long term care facilities and community-based care facilities in this state. The members shall include:

(a) The Long Term Care Ombudsman, who shall serve as a standing member of the council;

(b) A representative of the Governor's Commission on Senior Services, to be appointed by the commission;

(c) A representative of the Oregon Disabilities Commission, to be appointed by the commission;

(d) A representative of the Oregon Association of Area Agencies on Aging and Disabilities, to be appointed by the Governor;

(e) A representative of a senior or disabilities advocacy organization or an individual who advocates on behalf of seniors or persons with disabilities, to be appointed by the Governor;

(f) A nursing home administrator licensed under ORS 678.710 to 678.820 who has practiced continuously in Oregon in long term care for three years immediately preceding appointment, to be appointed by the Speaker of the House of Representatives;

(g) Two consumers of long term care facilities or community-based care facilities or family members of such residents, to be appointed by the Speaker of the House of Representatives;

(h) A director of nurses of an Oregon long term care facility who has practiced in this state in long term care for three years preceding appointment, to be appointed by the Speaker of the House of Representatives;

(i) A representative of an assisted living facility or a residential care facility, to be appointed by the President of the Senate;

(j) A representative of an adult foster home, to be appointed by the President of the Senate; and

(k) An in-home care agency provider, to be appointed by the President of the Senate.

(2) The term of office for each member appointed under this section shall be three years or until a successor has been appointed and qualified.

(3) Members of the council shall receive no compensation for their services but unpaid volunteers not otherwise compensated shall be allowed actual and necessary travel expenses incurred in the performance of their duties.

(4) The council shall:

(a) Elect a chairperson from among its members and elect or appoint a secretary, each of whom shall hold office for one year or until successors are elected;

(b) Hold an annual meeting and hold other meetings at such times and places as the Department of Human Services or the chairperson of the council may direct;

(c) Keep a record of its proceedings that is open to inspection at all times; and

(d) Act in an advisory capacity to the department on matters pertaining to quality of long term care facilities and community-based care facilities and reimbursement for long term care services and community-based care services. [1995 c.667 §1; 2001 c.104 §142]

410.555 Submission of changes to Medicaid reimbursement system to council; advisory recommendation; approval; report; budget review; rules. (1) The Department of Human Services shall submit to the Medicaid Long Term Care Quality and Reimbursement Advisory Council, for the council's review and recommendation, any proposed change or modification to the Oregon Medicaid reimbursement system for long term care services and community-based care services.

(2) Upon review of any proposed change or modification under subsection (1) of this section, the council shall issue a written advisory recommendation to the department. The recommendation shall state whether the council supports or opposes the proposed change or modification and whether the council believes the proposed change or modification will have an adverse or positive effect on the quality of long term care services and community-based care services provided under the Oregon Medicaid program.

(3) Prior to implementing any change or modification to the reimbursement system for long term care services and community-based care services, the Department of Human Services shall submit the council's written recommendation to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not in session. Before instituting the proposed change or modification, the department shall obtain the approval of the Legislative Assembly or the Emergency Board if the Legislative Assembly is not in session. A proposed change or modification with an estimated fiscal impact of $100,000 or less shall be exempt from the provisions of this subsection.

(4) At the beginning of each legislative session, the Medicaid Long Term Care Quality and Reimbursement Advisory Council shall review the Governor's proposed budget for the Department of Human Services.

(5) The Department of Human Services shall adopt such rules as are reasonably necessary for the enforcement of this section. The department shall submit to the council any proposed rule that directly or indirectly affects payment rates prior to proceeding with the notice requirements provided for in ORS 183.335. The department shall consider the comments of the council that pertain to the proposed rule. [1995 c.667 §2]

HOME CARE COMMISSION

410.595 Legislative intent and findings. The Legislative Assembly finds and declares that the interest and welfare of the public are served by the Home Care Commission that operates in accordance with section 11, Article XV of the Oregon Constitution, and ORS 410.595 to 410.625 and also are served by operations that:

(1) Do not compromise the resources of elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses;

(2) Do not compromise the ability of elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses to choose from among services, activities and purchases, including adult support services; and

(3) Do not reduce the amount and scope of the services, activities and purchases, including adult support services, available to elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses. [2010 c.100 §2]

410.600 Definitions for ORS 410.595 to 410.625. As used in ORS 410.595 to 410.625:

(1) "Activities of community inclusion" includes but is not limited to volunteer activities, employment, development of community life skills and participation in social and recreational community events.

(2) "Activities of daily living" includes but is not limited to the following:

(a) Bathing and personal hygiene;

(b) Dressing and grooming;

(c) Eating;

(d) Mobility;

(e) Bowel and bladder management; and

(f) Cognition.

(3) "Adult support services" means individually determined services, activities and purchases, whether those services, activities and purchases are necessary for an individual to live in the individual's own home or the individual's family's home or to fully participate in community life or work, that:

(a) Complement existing services, activities or purchases available to the individual;

(b) Are designed, selected and managed by the individual or the individual's legal representative;

(c) Are provided in accordance with an individualized plan; and

(d) Allow individuals to choose and have control over services and life goals.

(4) "Area agency" has the meaning given that term in ORS 410.040.

(5) "Commission" means the Home Care Commission established and operated pursuant to section 11, Article XV of the Oregon Constitution, and ORS 410.595 to 410.625.

(6) "Elderly person" has the meaning given that term in ORS 410.040.

(7) "Home care services" means assistance with activities of daily living, activities of community inclusion and self-management provided by a home care worker for an elderly person or a person with a disability.

(8) "Home care worker" means:

(a) A person:

(A) Who is hired directly by an elderly person or a person with a physical disability or by a parent or guardian of an elderly person or a person with a physical disability;

(B) Who receives moneys from the Department of Human Services for the purpose of providing care to the elderly person or the person with a physical disability;

(C) Whose compensation is funded in whole or in part by the department, an area agency or other public agency; and

(D) Who provides either hourly or live-in home care services; or

(b) A personal support worker.

(9) "Person with a disability" means a person with a physical disability, developmental disability or mental illness.

(10) "Personal support worker" means a person:

(a) Who is hired by a person with a developmental disability or mental illness or a parent or guardian of a person with a developmental disability or mental illness;

(b) Who receives moneys from the department for the purpose of providing care to the person with a developmental disability or mental illness;

(c) Whose compensation is provided in whole or in part through the department, a support services brokerage or other public agency; and

(d) Who provides home care services in the home or community.

(11) "Self-management" includes but is not limited to the following activities, other than activities of daily living, required by an individual to continue living independently in the individual's own home:

(a) Medication and oxygen management;

(b) Transportation;

(c) Meal preparation;

(d) Shopping; and

(e) Client-focused general household work.

(12) "Support services brokerage" means an entity that performs the functions associated with the planning and implementation of adult support services, including the provision of services and the arrangement of activities and purchases, for the purpose of maximizing individual choice and self-determination for persons with developmental disabilities or mental illnesses. [2001 c.901 §1; 2003 c.14 §177; 2007 c.70 §178; 2010 c.100 §6]

410.602 Home Care Commission; membership; rules. (1) The Home Care Commission is created, consisting of nine members appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members shall be elderly persons or persons with disabilities who are receiving or who have received home care services. One member shall be appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

(a) Governor's Commission on Senior Services;

(b) Department of Human Services;

(c) Oregon Disabilities Commission; and

(d) Oregon Association of Area Agencies on Aging and Disabilities.

(2) The members shall be appointed for terms of three years. A member is eligible for reappointment and may serve no more than three consecutive terms. When making appointments to the commission, the Governor may consider recommendations from the entities listed in subsection (1) of this section and other organizations representing the interests of elderly persons and persons with disabilities.

(3) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The commission shall exercise all powers necessary to effectuate the purposes of ORS 410.595 to 410.625.

(5) The Governor shall select annually from the membership of the commission a chairperson who serves at the pleasure of the Governor. The chairperson or majority of the members of the commission then in office shall have the power to call regular or special meetings of the commission. The com-

mission shall meet at a place, date and hour determined by the commission.

(6) Members of the commission shall be paid compensation and expenses as provided in ORS 292.495 from such funds as may be available to the commission.

(7) Meetings of the commission shall be open and public in accordance with ORS 192.610 to 192.690. Records of the commission shall be open and available to the public in accordance with ORS 192.410 to 192.505. The commission shall meet regularly with the executive director of the Home Care Commission to make recommendations and set policy, to approve or reject reports of the executive director, to adopt rules and to transact other business.

(8) A quorum of the commission shall consist of a majority of the members of the commission then in office. All decisions of the commission shall be made by a majority of all the members then in office.

(9) The commission shall, in accordance with ORS chapter 183, adopt and enforce rules to carry out the provisions of ORS 410.595 to 410.625.

(10) The commission is not subject to ORS 291.050 to 291.060.

(11) Members of the commission are officers of the state and the commission is a state commission for purposes of ORS 30.260 to 30.300 and 278.120 and ORS chapter 180.

(12) The chairperson may sign, on behalf of the commission, contracts or agreements that the commission authorizes or is required to execute. [2001 c.901 §2; 2007 c.70 §179; 2007 c.797 §3]

410.603 Developmental Disabilities and Mental Health Committee. (1) The Home Care Commission shall create a Developmental Disabilities and Mental Health Committee.

(2) The committee shall provide information and make recommendations to the commission on:

(a) Methods of improving the quality of services available to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses;

(b) Means of ensuring that an adequate amount of services are available to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses; and

(c) All the duties and functions under ORS 410.595 to 410.625 as those duties and functions pertain to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses, including but not limited to:

(A) Qualifications for personal support workers;

(B) Registration of personal support workers;

(C) Referrals for routine, emergency and respite care;

(D) Training opportunities for personal support workers; and

(E) Collective bargaining.

(3) The commission shall consider the recommendations of the committee. When the commission does not follow the recommendations of the committee, the commission shall inform the committee of the reasons for not following the recommendations.

(4) The commission shall appoint members to the committee. In appointing members to the committee, the commission shall include at least one:

(a) Consumer of services, activities or purchases available to persons with developmental disabilities;

(b) Consumer of services, activities or purchases available to persons with mental illnesses;

(c) Family member of a person with a developmental disability;

(d) Family member of a person with a mental illness;

(e) Advocate for persons with developmental disabilities or mental illnesses;

(f) Personal support worker;

(g) Representative from an agency that assists persons with developmental disabilities or mental illnesses in finding and arranging resources for home care services; and

(h) Representative from a support services brokerage that assists persons with developmental disabilities or mental illnesses in finding and arranging resources for home care services. [2010 c.100 §3]

410.604 Duties of commission; executive director. (1) The Home Care Commission shall ensure the quality of home care services by:

(a) Establishing qualifications for home care workers with the advice and consent of the Department of Human Services;

(b) Providing training opportunities for home care workers and elderly persons and persons with disabilities who employ home care workers;

(c) Establishing and maintaining a registry of qualified home care workers;

(d) Providing routine, emergency and respite referrals of home care workers;

(e) Entering into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the commission; and

(f) Working cooperatively with area agencies and state and local agencies to accomplish the duties listed in paragraphs (a) to (e) of this subsection.

(2)(a) The commission shall enter into an interagency agreement with the department to contract for a department employee to serve as executive director of the commission. The executive director shall be appointed by the Director of Human Services in consultation with the Governor and subject to approval by the commission, and shall serve at the pleasure of the Director of Human Services. The commission may delegate to the executive director the authority to act on behalf of the commission to carry out its duties and responsibilities, including but not limited to:

(A) Entering into contracts or agreements; and

(B) Taking reasonable or necessary actions related to the commission's role as employer of record for home care workers under ORS 410.612.

(b) The commission shall enter into an interagency agreement with the department for carrying out any of the duties or functions of the commission, for department expenditures and for the provision of staff support by the department.

(3) When conducting its activities, and in making decisions relating to those activities, the commission shall first consider the effect of its activities and decisions on:

(a) Improving the quality of service delivered by home care workers;

(b) Ensuring adequate hours of service are provided to elderly persons and persons with disabilities by home care workers; and

(c) Ensuring that services, activities and purchases that are purchased by elderly persons and persons with disabilities other than home care services, including adult support services, are not compromised or diminished.

(4) The commission shall work with culturally diverse community-based organizations to train and certify community health workers and personal health navigators. The workers and navigators shall work as part of a multidisciplinary team under the direction of a licensed or certified health care professional. The commission shall recruit qualified home care workers who desire to be trained and certified as community health workers or personal health navigators.

(5) The commission shall ensure that each coordinated care organization honors all of the terms and conditions of employment established by the commission with respect to the community health workers and personal health navigators referred by the commission. This subsection does not require a coordinated care organization to employ or contract with community health workers and personal health navigators certified by the commission so long as the community health workers and personal health navigators employed or otherwise retained by the organization meet competency standards established by the authority under ORS 414.665.

(6) The commission has the authority to contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property in its own name.

(7) As used in this section, "community health worker," "coordinated care organization" and "personal health navigator" have the meanings given those terms in ORS 414.025. [2001 c.901 §3; 2007 c.70 §180; 2007 c.797 §4; 2010 c.100 §8; 2011 c.602 §23]

410.606 Referral of qualified individuals on commission registry. (1) The Department of Human Services, an area agency or other public agency shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

(2) The department shall collect:

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry maintained by the commission;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers' compensation purposes.

(3) If necessary to collect the information required by subsection (2) of this section:

(a) The department shall request the required information from any agency or support services brokerage that provides or

arranges payroll services for home care workers; and

(b) The agency or support services brokerage shall provide the department with the requested information.

(4) The department shall keep and maintain until July 1, 2013, the information that the department collects and receives under this section for the purpose of updating the registry maintained by the commission.

(5) The department:

(a) Is not required to publish, electronically or otherwise, the names and addresses of home care workers that the department collects and receives under this section; and

(b) Shall provide the name and address of a home care worker to any person who requests the information in accordance with ORS 192.410 to 192.505. [2001 c.901 §4; 2010 c.100 §§4,7]

Note: The amendments to 410.606 by section 11, chapter 100, Oregon Laws 2010, become operative July 1, 2013. See section 12, chapter 100, Oregon Laws 2010. The text that is operative on and after July 1, 2013, is set forth for the user's convenience.

410.606. (1) The Department of Human Services, an area agency, other public agency or support services brokerage shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

(2) To facilitate the development and maintenance of the registry maintained by the commission and any training opportunity offered by the commission, and to meet the requirements of providing workers' compensation, the department, area agencies, other public agencies and support services brokerages shall report to the commission:

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers' compensation purposes.

(3) If necessary to collect the information required by subsection (2) of this section:

(a) The commission shall request the required information from the department or any agency or support services brokerage that provides or arranges payroll services for home care workers; and

(b) The department, agency or support services brokerage shall provide the commission with the requested information.

410.608 Selection of home care worker; right to terminate employment; eligibility determination made by Department of Human Services. (1) An elderly person or a person with a disability who hires a home care worker has the right to select the home care worker, including a family member.

(2) An elderly person or a person with a disability who hires a home care worker has the right to terminate the employment of the home care worker at any time and for any reason.

(3) The Department of Human Services shall determine the eligibility of an elderly person or a person with a disability to receive home care services under the Medicaid program and state-funded long term care services. [2001 c.901 §5; 2007 c.70 §181]

410.610 [1981 c.183 §1; 1987 c.428 §27; 1989 c.721 §50; renumbered 124.050 in 1995]

410.612 Collective bargaining. (1) For purposes of collective bargaining under ORS 243.650 to 243.782, the Home Care Commission is the employer of record for home care workers.

(2) Notwithstanding subsection (1) of this section, home care workers may not be considered for any purposes to be an employee of the State of Oregon, an area agency or other public agency.

(3) The Oregon Department of Administrative Services shall represent the commission in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of home care workers. The department is authorized to agree to terms and conditions of collective bargaining agreements on behalf of the commission and the Department of Human Services. [2001 c.901 §6]

410.614 Rights of home care workers. Notwithstanding ORS 243.650 (19) and (20), the Home Care Commission shall be considered a public employer and home care workers shall be considered public employees governed by ORS 243.650 to 243.782. Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the commission on matters concerning employment relations. These rights shall be exercised in accordance with the rights granted to public employees with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Home care workers do not have the right to strike. [2001 c.901 §7]

410.620 [1981 c.183 §2; renumbered 124.055 in 1995]

410.625 Authority of commission; budget. (1) In carrying out its duties under ORS 410.595 to 410.625, the Home Care Commission may:

(a) Enter into an interagency agreement or a contract with any state agency for the performance of the commission's duties or the leasing of office space;

(b) Provide nonemployee compensation to home care workers or prospective home care workers who attend training sessions approved or sponsored by the commission;

(c) On behalf of an elderly person or a person with a disability who hires a home care worker through the Home Care Commission registry, elect workers' compensation coverage or arrange for health insurance coverage, including group coverage, for the person's home care workers; and

(d) As prescribed by rule, charge fees to and collect fees from persons who attend training sessions sponsored by the commission and who currently are not home care workers.

(2) The commission and the Department of Human Services shall confer as to the amount of funds necessary to carry out the duties and activities of the commission, and the department shall include the agreed upon amount in the Governor's budget request to the Legislative Assembly.

(3) The commission may apply for and receive gifts and grants from any public or private source.

(4) The commission may award grants from funds appropriated by the Legislative Assembly to the department for allocation to the commission or from funds otherwise available from any other source for the purpose of carrying out the duties of the commission under ORS 410.595 to 410.625. [2007 c.797 §2; 2009 c.11 §51]

410.630 [1981 c.183 §3; renumbered 124.060 in 1995]

410.640 [1981 c.183 §4; 1983 c.434 §3; renumbered 124.065 in 1995]

410.650 [1981 c.183 §5; 1983 c.434 §1; 1983 c.740 §139; renumbered 124.070 in 1995]

410.660 [1981 c.183 §6; renumbered 124.075 in 1995]

410.670 [1981 c.183 §7; 1987 c.428 §28; renumbered 124.080 in 1995]

410.680 [1981 c.183 §8; 1985 c.651 §1; renumbered 124.085 in 1995]

410.690 [1981 c.183 §9; 1983 c.434 §2; 1985 c.651 §2; renumbered 124.090 in 1995]

410.700 [1981 c.183 §10; renumbered 124.095 in 1995]

STATE POLICY ON PERSONS WITH DISABILITIES

410.710 State policy on persons with disabilities. The Legislative Assembly finds and declares that it is a policy of this state that:

(1) All persons regardless of any disability have the right to live their lives with dignity and to participate in society and all state programs to the fullest extent possible.

(2) There is a need for education of state employees and the public generally about the capacity of persons with disabilities to participate and compete in the mainstream of society.

(3) Stereotypes and negative labels have no place in state laws and words such as "victim," "afflicted," "crippled" and "handicapped" that have connotations of unclean, unworthy, unproductive and begging are judgmental. Wherever possible, words such as these shall be avoided.

(4) The language of state laws shall reflect a positive outlook about persons with disabilities. The worth and uniqueness of each individual citizen is to be emphasized by using words and phrases that emphasize the person first and then identify any disability when relevant. [1989 c.224 §1; 2005 c.411 §3]

410.715 Person suffering brain injury to be considered person with disability. It is the policy of the state that any person experiencing an injury defined as an injury to the brain caused by extrinsic forces where the injury results in the loss of cognitive, psychological, social, behavioral or physiological function for a sufficient time to affect that person's ability to perform activities of daily living shall be considered a person with a disability. [1991 c.402 §1; 2007 c.70 §182]

410.720 Mental health and addiction services for senior citizens and persons with disabilities. (1) It is the policy of this state to provide mental health and addiction services for all Oregon senior citizens and persons with disabilities through a comprehensive and coordinated statewide network of local mental health services and alcohol and drug abuse education and treatment. These services should involve family and friends and be provided in the least restrictive and most appropriate settings.

(2) The Department of Human Services and the Oregon Health Authority shall facilitate the formation of local community partnerships between the senior, disability, mental health, alcohol and drug abuse and health care communities by supporting the development of program approaches that meet minimum standards adopted by the Oregon Health Authority under ORS 430.357 including, but not limited to:

(a) Mental health and addiction screenings and assessments in long term care settings;

(b) Outreach services to seniors and persons with disabilities in their homes, including gatekeeper programs, neighborhood programs and programs designed for rural communities;

(c) Multilingual and multicultural medical and psychiatric services for ethnic minorities with physical disabilities and hearing impairments;

(d) Education and training for health care consumers, health care professionals and mental health and addiction services providers on mental health and addiction issues, programs and services for seniors and persons with disabilities; and

(e) Education and consultation services for primary care physicians treating seniors and persons with disabilities.

(3) In carrying out the provisions of subsections (1) and (2) of this section, the department and the authority shall:

(a) Develop plans for service coordination within the department and the authority;

(b) Recommend budget provisions for the delivery of needed services offered by the department and the authority; and

(c) Develop plans for expanding mental health and addiction services for seniors and persons with disabilities to meet the increasing demand. [1991 c.775 §2; 2001 c.104 §143; 2001 c.900 §85; 2005 c.691 §6; 2011 c.673 §12; 2011 c.720 §89]

TRUST FUNDS FOR PERSONS WITH DISABILITIES

410.730 Self-Sufficiency Trust Fund; rules. (1) The Self-Sufficiency Trust Fund is established, separate and distinct from the General Fund, in the State Treasury. Interest earned, if any, shall inure to the benefit of this fund. The purpose of the Self-Sufficiency Trust Fund is to provide a life-care planning option to meet the supplemental service needs of individuals with disabilities by enabling parents, families and others to plan more secure futures for their dependents with disabilities or other named beneficiaries with disabilities without fear of loss of benefits or invasion of trust principal.

(2) The State Treasurer shall be custodian of the Self-Sufficiency Trust Fund, and the Oregon Department of Administrative Services shall direct payments from the trust fund upon vouchers properly certified by the Director of Human Services.

(3) The Director of Human Services may accept money from a self-sufficiency trust described in subsection (8) of this section for deposit in the Self-Sufficiency Trust Fund pursuant to an agreement with the trust. The Department of Human Services shall maintain separate accounting records in the Self-Sufficiency Trust Fund for each named beneficiary and shall promptly credit to each account moneys deposited in the Self-Sufficiency Trust Fund by a self-sufficiency trust described in subsection (8) of this section on behalf of a named beneficiary.

(4) The agreement, naming one or more beneficiaries residing in this state who have developmental disabilities, mental illness or physical disabilities or persons otherwise eligible for benefits or services due to disability, shall specify the supplementary care, support or treatment to be provided for each named beneficiary with the moneys deposited in the Self-Sufficiency Trust Fund.

(5) The State Treasurer shall credit interest on the Self-Sufficiency Trust Fund to the fund, and the Department of Human Services shall allocate the interest pro rata to the respective accounts of the named beneficiaries of the Self-Sufficiency Trust Fund.

(6) The moneys in each account together with any accumulated interest on that account shall be expended only to provide supplementary care, support and treatment for the named beneficiary in accordance with the terms of the agreement. The moneys from each account shall not be expended to provide supplementary care, support and treatment unless the named beneficiary is 18 years of age or older or is emancipated, or the parents of the beneficiary have died, or in cases of extreme, unforeseen hardship. If the agreement so provides, the moneys in each account may be expended for purposes other than providing supplementary care, support and treatment upon a showing of extreme, unforeseen hardship. The Department of Human Services shall by rule establish criteria for determining what conditions constitute extreme, unforeseen hardship allowing expenditure of moneys for purposes other than providing supplementary care, support and treatment.

(7) In the event that the Director of Human Services determines that the money in the account of a named beneficiary cannot be used for supplementary care, support or treatment of the beneficiary in a manner consistent with the agreement, the remaining money in the account, together with any accumulated interest, shall be promptly returned to the self-sufficiency trust which deposited the money in the Self-Sufficiency Trust Fund.

(8) A nonprofit corporation that is a 501(c)(3) organization under the United States Internal Revenue Code of 1954 and that is organized under the Nonprofit Corporation Act, Title 13-B, may establish a self-sufficiency trust for the purpose of providing for supplementary care, support or treatment of one or more persons who have developmental disabilities, mental illness or physical disabilities or persons otherwise eligible for benefits or services due to disability by depositing the proceeds in the Self-Sufficiency Trust Fund established under subsections (1) to (7) of this section.

(9) The receipt by a beneficiary of supplementary care, support or treatment provided with money from the Self-Sufficiency Trust Fund shall not in any way reduce, im-

pair or diminish the benefits to which the beneficiary is otherwise entitled by law. No interest in the principal or income of this trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary. Furthermore, because of the special needs of the beneficiary, no part of the corpus thereof, nor principal nor undistributed income shall be subject to the claims of voluntary or involuntary creditors for the provision of care and services, including residential care, by any public entity, office, department or agency of the State of Oregon or of any other state, or of the United States or any other governmental agency.

(10) The Director of Human Services shall serve as the official who implements the provision of care, support or treatment for the beneficiary from moneys maintained in the Self-Sufficiency Trust Fund in the beneficiary's name. The director shall adopt rules necessary for the administration and the implementation of this subsection. [Formerly 412.700; 2007 c.70 §183]

410.732 Disabilities Trust Fund; rules. (1) The Disabilities Trust Fund is established, separate and distinct from the General Fund, in the State Treasury. The purpose of the Disabilities Trust Fund is to provide supplemental services to meet the needs of low income and indigent individuals with disabilities.

(2) The State Treasurer shall be custodian of the Disabilities Trust Fund and the Oregon Department of Administrative Services, subject to appropriations, shall direct payments for the benefit of low income and indigent people with disabilities or recipients of services from the Department of Human Services, or both, from the trust fund as recommended by the Director of Human Services.

(3) The Director of Human Services may accept for deposit in the Disabilities Trust Fund:

(a) Moneys left to the Disabilities Trust Fund by donors of a self-sufficiency trust described in ORS 410.730 (8) at the death of the beneficiary with a disability; and

(b) Bequests and contributions from private donors, corporations or foundations.

(4) The State Treasurer shall credit interest on the Disabilities Trust Fund to the fund.

(5) Moneys in the Disabilities Trust Fund shall be expended only to provide supplemental services to meet the need for care, support or treatment for low income or indigent individuals with developmental disabilities, mental illness or physical disabilities or who are otherwise eligible to receive services or benefits because of disability.

(6) The receipt by a beneficiary of supplementary care, support or treatment provided with money from the Disabilities Trust Fund shall not in any way reduce, impair or diminish the benefits to which the beneficiary is otherwise entitled by law. No interest in the principal or income of this trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary. Furthermore, because of the special needs of the beneficiary, no part of the corpus thereof, nor principal nor undistributed income shall be subject to the claims of voluntary or involuntary creditors for the provision of care and services, including residential care, by any public entity, office, department or agency of the State of Oregon or of any other state, or of the United States or any other governmental agency.

(7) The Director of Human Services shall serve as the official who implements the provision of care, support or treatment for the beneficiary from moneys available from the Disabilities Trust Fund. The director shall adopt rules necessary for the administration and implementation of this section.

(8) The care, support or treatment provided under ORS 410.730 and this section must conform to the waiver requirements of the federal Centers for Medicare and Medicaid Services.

(9) Upon the death of a named beneficiary of a self-sufficiency trust established under ORS 410.730 (8), the balance of any money deposited to the account of the beneficiary in the Self-Sufficiency Trust Fund shall be transferred to the Disabilities Trust Fund for the purposes described in subsection (1) of this section unless the agreement entered into between the Director of Human Services and the self-sufficiency trust under ORS 410.730 (3) provides otherwise. The Director of Human Services shall enter into no agreement under ORS 410.730 (3) unless the agreement provides that at least 50 percent of any moneys credited to the account of the named beneficiary at the time of the beneficiary's death be transferred from the Self-Sufficiency Trust Fund to the Disabilities Trust Fund upon the death of the beneficiary. [Formerly 412.710; 2007 c.70 §184]

PROGRAM TO SERVE NEEDS OF PERSONS WHO ARE DEAF OR HARD OF HEARING

410.740 Oregon Deaf and Hard-of-Hearing Services Program; advisory committee. (1) The Oregon Deaf and Hard-of-Hearing Services Program is created in

the Department of Human Services. The purpose of the program is to assist members of the public and state agencies in making agency programs available and accessible to individuals who are deaf or hard of hearing.

(2) The program may also provide the following:

(a) Identification and publicity of the needs and concerns of individuals who are deaf or hard of hearing as their needs and concerns relate to the full achievement of economic, social, legal and political equity.

(b) Advice to the Department of Human Services, the Governor, the Legislative Assembly and appropriate state agency administrators on how state services for individuals who are deaf or hard of hearing might be improved or better coordinated to meet the needs of these individuals.

(c) Information to individuals who are deaf or hard of hearing about where they may obtain assistance in rehabilitation and employment and about laws prohibiting discrimination in employment as a result of disability.

(d) Cooperation with and assistance to interest groups in rehabilitation and employment of individuals who are deaf or hard of hearing and encouragement of public and private employers to undertake affirmative action to ensure equitable employment of individuals who are deaf or hard of hearing.

(e) Promotion of a continuous program of information and education to employers and the general public to increase awareness of and sensitivity to the needs of individuals who are deaf or hard of hearing for equitable education and training that will ensure for these individuals their full vocational potential.

(f) Promotion of a continuous information program for placement of individuals who are deaf or hard of hearing in suitable employment.

(3)(a) The Director of Human Services shall appoint an advisory committee to advise the director regarding the program. The director shall consult with the advisory committee regarding the services described in this section.

(b) The director shall appoint to the advisory committee 12 individuals who have experience in issues that affect individuals who are deaf or hard of hearing. [2005 c.663 §11; 2007 c.70 §185]

MISCELLANEOUS

410.850 [1985 c.647 §2; repealed by 1987 c.523 §1 (410.851 enacted in lieu of 410.850)]

410.851 Policy on patient-based reimbursement system for long term care facilities; rules. (1) The Legislative Assembly finds and declares that patients admitted to and cared for by long term care facilities in Oregon are more impaired than in the past. In keeping with the traditional commitment of the State of Oregon to the care and protection of its citizens who are frail or elderly or who have disabilities, as expressed in ORS 410.010, the Legislative Assembly declares that a patient-based reimbursement system emphasizing quality incentives is appropriate for long term care facilities. Such a system would reward long term care facilities for outcomes, such as maintaining or improving a patient's condition, and meet the legitimate costs of caring for patients.

(2) As used in this section, "patient-based reimbursement" means reimbursement for direct patient care according to the needs of the patient, based on multiple levels of patient health, functioning and impairment.

(3) A patient-based reimbursement system does not require the Department of Human Services to assess each patient and reimburse long term care facilities according to the constantly changing conditions of the patients except for changes between skilled and intermediate levels of care which shall result in prompt readjustment of rates.

(4) The department shall establish by rule definitions of levels of care and the payment rates for the patient-based reimbursement system. The rates shall be designed to maintain and enhance access to community-based care services.

(5) Notwithstanding ORS 410.555, the department, in cooperation with representatives of community-based care providers, shall implement policies that offer incentives to providers for entering into Medicaid contracts with the department and that enable a patient, to the greatest extent possible, to remain in the residential setting offering the scope of services that best meets the patient's needs. [1987 c.523 §2 (enacted in lieu of 410.850); 2007 c.70 §186; 2008 c.18 §11; 2011 c.201 §10]

PENALTIES

410.890 Civil penalty. Violation of ORS 410.520 shall be subject to a civil penalty not to exceed $5,000, imposed in the manner provided in ORS 441.705 to 441.745. [1989 c.912 §9; 1991 c.67 §105]

410.990 [1981 c.183 §12; 1999 c.1051 §177; renumbered 124.990 in 2001]