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Chapter 431

2003 EDITION

State and Local Administration and Enforcement of Health Laws

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431.030 [Repealed by 1971 c.650 §51]

STATE ADMINISTRATION

431.035 Director's authority to delegate functions. (1) The Director of Human Services may delegate to any of the officers and employees of the Department of Human Services the exercise or discharge in the director's name of any power, duty or function of whatever character vested in or imposed upon the director by the laws of Oregon. However, the power to administer oaths and affirmations, subpoena witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records may be exercised by an officer or employee of the department only when specifically delegated in writing by the director.

(2) The official act of any such person so acting in the director's name and by the authority of the director shall be deemed to be an official act of the director. [1973 c.829 §2]

431.040 [Amended by 1969 c.314 §39; 1971 c.650 §7; repealed by 1973 c.358 §15]

431.045 Public Health Officer; appointment; qualifications; duties. The Director of Human Services shall appoint a physician licensed by the Board of Medical Examiners for the State of Oregon and certified by the American Board of Preventive Medicine who shall serve as the Public Health Officer and be responsible for the medical and paramedical aspects of the health programs within the department. [1971 c.650 §2; 1973 c.358 §5; 1977 c.267 §18; 1987 c.618 §1; 2001 c.900 §143]

431.050 [Amended by 1967 c.461 §3; repealed by 1971 c.650 §51]

431.053 [1973 c.358 §3; repealed by 1977 c.751 §39]

431.055 [1967 c.363 §2; repealed by 1971 c.650 §51]

431.060 [Repealed by 1971 c.650 §51]

431.065 [1971 c.37 §2; 1977 c.582 §7; repealed by 2001 c.900 §261]

431.070 [1961 c.723 §1; 1969 c.314 §40; repealed by 1971 c.650 §51]

ENFORCEMENT OF HEALTH LAWS AND RULES

431.110 General powers of Department of Human Services. Subject to ORS 417.300 and 417.305, the Department of Human Services shall:

(1) Have direct supervision of all matters relating to the preservation of life and health of the people of the state.

(2) Keep the vital statistics and other health related statistics of the state.

(3) Make sanitary surveys and investigations and inquiries respecting the causes and prevention of diseases, especially of epidemics.

(4) Investigate, conduct hearings and issue findings in connection with annexations proposed by cities as provided in ORS 222.840 to 222.915.

(5) Have full power in the control of all communicable diseases.

(6) Have authority to send a representative of the department to any part of the state when deemed necessary.

(7) From time to time, publish and distribute to the public in such form as the department determines, such information as in its judgment may be useful in carrying on the work or purposes for which the department was established.

(8) Carry out the duties imposed on the department under ORS chapter 690. [Amended by 1955 c.105 §1; 1967 c.624 §18; 1971 c.650 §9; 1977 c.582 §8; 1987 c.414 §83; 1989 c.834 §18; 1991 c.122 §11; 2001 c.900 §254]

431.120 Duties of Department of Human Services. The Department of Human Services shall:

(1) Enforce state health policies and rules.

(2) Have the custody of all books, papers, documents and other property belonging to the State Health Commission, which may be deposited in the department's office.

(3) Give such instructions as may be necessary, and forward them to the various local public health administrators throughout the state.

(4) Routinely conduct epidemiological investigations for each case of sudden infant death syndrome including, but not limited to, the identification of risk factors such as birth weight, maternal age, prenatal care, history of apnea and socioeconomic characteristics. The department may conduct such investigations through local health departments only upon adoption by rule of a uniform epidemiological data collection method.

(5) Adopt rules, related to loans and grants awarded under ORS 285B.410 to 285B.482 or 541.700 to 541.855 for the improvement of drinking water systems for the purpose of maintaining compliance with applicable state and federal drinking water quality standards. In adopting rules under this subsection, the Department of Human Services shall coordinate the department's

rulemaking process with the Water Resources Department and the Economic and Community Development Department in order to assure that rules adopted under this subsection are consistent with rules adopted under ORS 285B.467 and 541.845.

(6) Control health care capital expenditures by administering the state certificate of need program pursuant to ORS 442.325 to 442.344. [Amended by 1971 c.650 §10; 1977 c.582 §9; 1981 c.385 §1; 1991 c.944 §4; 1993 c.18 §107; 1993 c.754 §8]

431.130 [Amended by 1959 c.629 §5; 1959 c.684 §2; 1961 c.725 §10; 1963 c.32 §1; 1965 c.362 §3; 1969 c.14 §2; 1969 c.641 §16; 1971 c.195 §1; 1971 c.413 §13; 1971 c.763 §13; 1973 c.408 §33; 1973 c.833 §41; 1973 c.835 §233; repealed by 1977 c.582 §61]

431.140 Enforcement of rules. All state and local officers and employees, including peace officers, shall enforce rules adopted by the Department of Human Services relating to public health and other health matters subject to the authority of the Director of Human Services. [Amended by 1959 c.314 §21; 1973 c.833 §42; 1977 c.582 §10; 2001 c.900 §144]

431.150 Enforcement of health laws generally. (1) The local public health administrators are charged with the strict and thorough enforcement of the public health laws of this state in their districts, under the supervision and direction of the Department of Human Services. They shall make an immediate report to the department of any violation of such laws coming to their notice by observation, or upon the complaint of any person, or otherwise.

(2) The department is charged with the thorough and efficient execution of the public health laws of this state in every part of the state, and with supervisory powers over all local public health administrators, to the end that all the requirements are complied with.

(3) The department may investigate cases of irregularity or violation of law. All local public health administrators shall aid the department, upon request, in such investigation.

(4) When any case of violation of the public health laws of this state is reported to any district attorney or official acting in said capacity, such official shall forthwith initiate and promptly follow up the necessary proceedings against the parties responsible for the alleged violations of law.

(5) Upon request of the department, the Attorney General shall likewise assist in the enforcement of the public health laws of this state. [Amended by 1959 c.314 §22; 1971 c.650 §12; 1973 c.833 §43; 1973 c.835 §165; 1974 c.36 §12; 1977 c.582 §11]

431.155 Restraining violation of public health laws. (1) Whenever it appears to the Department of Human Services that any person is engaged or about to engage in any acts or practices that constitute a violation of any statute relating to public health administered by the department, or any rule or order issued thereunder, the department may institute proceedings in the circuit courts to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such person, or its officers, agents, employees and representatives from further violation of such statute, rule or order, and enjoining upon them obedience thereto.

(2) The provisions of this section are in addition to and not in substitution of any other enforcement provisions contained in any statute administered by the department. [1967 c.94 §2; 1971 c.650 §13; 1977 c.582 §12; 2001 c.900 §145]

431.157 County authority to restrain violation of public health laws. Pursuant to ORS 448.100 (1) and 446.425 (1), the county is delegated the authority granted to the Director of Human Services in ORS 431.155. [1983 c.370 §4; 2003 c.309 §5]

Note: 431.157 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.160 Commencement of prosecutions. The district attorney, county attorney or Attorney General may institute prosecutions for violation of any public health statute by information, by indictment or by complaint verified before any magistrate. [Amended by 1959 c.314 §23; 1973 c.833 §44; 1977 c.582 §13; 1995 c.658 §104]

431.170 Enforcing health laws and rules when local officers are delinquent. (1) The Director of Human Services shall take direct charge of the functions that are necessary to preserve the public health in any county or district whenever any county or district official fails or refuses to administer or enforce the public health laws or rules that the director or board is charged to enforce.

(2) The director may call to the aid of the director such assistance as is necessary for the enforcement of such statutes and rules, the expense of which shall be borne by the county or district making the use of this procedure necessary, to be paid out of the respective county or district treasury upon vouchers properly certified by the director. [Amended by 1959 c.314 §24; 1973 c.833 §45; 1977 c.582 §14; 2001 c.900 §146]

431.175 Warrant procedure. If necessary, the Director of Human Services or a designee thereof, the State Fire Marshal or a designee thereof or an officer of a law enforcement agency may appear before any magistrate empowered to issue warrants in criminal cases, and require such magistrate

to issue a warrant, directing it to any sheriff or deputy or any constable or police officer, to enter the described property or to remove any person or obstacle, or to defend any threatened violence to the director or a designee thereof, the State Fire Marshal or a designee thereof or an officer, upon entering private property, or to assist the director in any way. [Formerly 433.025; 1991 c.67 §112]

431.180 Interference with individual's selection of physician or treatment or with religious practice prohibited. Nothing in the public health laws shall be construed to empower or authorize the Department of Human Services or its representatives, or any county or district board of health or its representatives to interfere in any manner with the individual's right to select the physician or mode of treatment of the choice of the individual, nor interfere with the practice of any person whose religion treats or administers to the sick or suffering by purely spiritual means. However, sanitary laws and rules must be complied with. [Amended by 1977 c.582 §15]

431.190 Advisory board on health care professions; duties; purpose of board rules. The Director of Human Services shall appoint, not later than 60 days after October 4, 1977, an advisory board to study the practices and procedures of the health care professions in this state and to recommend rules relating to the auditing of health care practices in hospitals which will:

(1) Promote standard record keeping by hospitals and persons practicing any of the healing arts in hospitals;

(2) Establish those criteria most appropriate for determining the proper objects of such auditing; and

(3) Insure auditing of those practices and procedures most relevant to the causes and occurrence of professional negligence in hospitals. [1977 c.448 §8; 1993 c.742 §96]

431.195 Oregon Public Health Advisory Board; members; terms; meetings; compensation; duties. (1) There is established the Oregon Public Health Advisory Board to serve as an advisory body to the Director of Human Services.

(2) The members of the board shall be residents of this state and shall be appointed by the Governor. The board shall consist of 15 members at least one-half of whom shall be public members broadly representing the state as a whole and the others to include representatives of local government and public and private health providers. At least two representatives, one consumer and one provider, from the Oregon Health Policy Commission shall serve on the board.

(3) The Oregon Public Health Advisory Board shall:

(a) Advise the director on policy matters related to the operation of the Department of Human Services.

(b) Provide a review of statewide public health issues and make recommendations to the director.

(c) Participate in public health policy development.

(4) Members shall be appointed for four-year terms. No person shall serve more than two consecutive terms.

(5) The board shall meet at least quarterly.

(6) Members of the board shall be entitled to compensation and expenses as provided in ORS 292.495.

(7) Vacancies on the board shall be filled by appointments of the Governor for the unexpired term. [1983 c.653 §1; 2001 c.900 §147; 2003 c.784 §10]

Note: 431.195 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FINANCIAL ADMINISTRATION; SURPLUS PROPERTY; FEDERAL AID

431.210 Public Health Account. (1) There is established in the General Fund the Public Health Account, classified separately as to federal and other moneys.

(2) All fines, fees, penalties, federal apportionments or contributions and other moneys received by the Department of Human Services relating to public health shall be turned over to the State Treasurer not later than the 10th day of the calendar month next succeeding their receipt by the department and shall be credited to the Public Health Account.

(3) All moneys credited to the Public Health Account hereby are appropriated and made available for the payment of expenses of the department. [Amended by 1971 c.650 §14; 1973 c.427 §5; 1977 c.582 §16; 2001 c.900 §148]

431.220 Record of moneys in Public Health Account. The department shall keep a record of all moneys deposited in the Public Health Account. This 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. [Amended by 1973 c.427 §6; 1977 c.582 §17]

431.230 Emergency or revolving fund. (1) The Director of Human Services may request the Oregon Department of Administrative Services to, and when so requested, the

Oregon Department of Administrative Services shall, draw a payment on the Public Health Account in favor of the Director of Human Services in a sum not exceeding $25,000, which sum shall be used by the director as an emergency or revolving fund.

(2) The emergency or revolving fund shall be deposited with the State Treasurer, and shall be at the disposal of the Director of Human Services. It may be used to pay advances for salaries, travel expenses or any other proper claim against, or expense of, the Department of Human Services or the health-related licensing boards for whom the department provides accounting services.

(3) Claims for reimbursement of advances paid from the emergency or revolving fund shall be submitted to the department for approval. When such claims are so approved, payments covering them shall be drawn in favor of the Director of Human Services and charged against the appropriate fund or account, and shall be used to reimburse the emergency or revolving fund.

(4) The department may establish petty cash funds within the emergency or revolving fund by drawing checks upon the emergency or revolving fund payable to the custodians of the petty cash funds. [Amended by 1973 c.427 §7; 1975 c.614 §16; 1999 c.829 §6; 2003 c.14 §241]

431.240 [Repealed by 1955 c.147 §1]

431.250 Federal grants to be handled by Department of Human Services; disbursement; planning. (1) The Department of Human Services hereby is designated as the state agency to apply to and receive from the federal government or any agency thereof such grants for promoting public health and the prevention of disease, including grants for cancer control and industrial hygiene programs, as may be available to this state or any of its political subdivisions or agencies.

(2) For the purposes of subsection (1) of this section, the department shall:

(a) Disburse or supervise the disbursement of all funds made available at any time by the federal government or this state for those purposes.

(b) Adopt, carry out and administer plans for those purposes. Plans so adopted shall be made statewide in application insofar as reasonably feasible, possible or permissible, and shall be so devised as to meet the approval of the federal government or any of its agencies, not inconsistent with the laws of the state. [Amended by 1961 c.706 §20a; 1967 c.343 §1; 1971 c.650 §15; 1973 c.829 §20; 1977 c.751 §34; subsections (3), (4) renumbered 442.110; 2001 c.900 §149]

BONE MARROW DONOR PROGRAM

431.270 Department duties. (1) The Department of Human Services shall educate residents of this state about:

(a) The need for bone marrow donors;

(b) The procedures required to become registered as a potential bone marrow donor, including procedures for determining a person's tissue type; and

(c) The medical procedures a donor must undergo to donate bone marrow or other sources of blood stem cells.

(2) The Department of Human Services shall make special efforts to educate and recruit citizens of Oregon with a special emphasis on minority populations to volunteer as potential bone marrow donors. Means of communication may include use of press, radio and television, and placement of educational materials in appropriate health care facilities, blood banks and state and local agencies. The Department of Human Services in conjunction with the Department of Transportation shall make educational materials available at all places where driver licenses are issued or renewed. [1991 c.652 §1]

Note: 431.270 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.275 [1991 c.652 §5; repealed by 1999 c.59 §123]

431.280 [1991 c.652 §6; repealed by 1999 c.59 §123]

SPINAL CORD INJURY RESEARCH BOARD

431.290 Spinal Cord Injury Research Board; members; terms; chairperson; meetings; rules. (1) There is established a Spinal Cord Injury Research Board consisting of 11 members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of a member to the board is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) The members of the Spinal Cord Injury Research Board shall be citizens of this state who are well informed on the issues relating to spinal cord injuries and related disabilities. Members may include, but are not limited to:

(a) A minimum of five health professionals with clinical practice experience in

each of the practice fields of neuroscience, neurology, neurosurgery, neuropharmacology and spinal cord rehabilitative medicine;

(b) A representative of the Oregon Disabilities Commission;

(c) A representative of a disabilities advocacy organization or an individual who advocates on behalf of persons with spinal cord injuries;

(d) A representative of the Department of Human Services;

(e) Members of the Legislative Assembly; and

(f) A person with a spinal cord injury.

(5) The board shall elect one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the performance of the functions of such offices as the board determines.

(6) The board shall meet at least once every three months at a place, day and hour determined by the chairperson. The board also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(7) In accordance with applicable provisions of ORS chapter 183, the board may adopt rules necessary for the administration of the grant program and fund described in ORS 431.292 and 431.294. [1999 c.1044 §§1,3]

Note: 431.290 to 431.294 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.292 Duties of board; grants. (1) The Spinal Cord Injury Research Board may solicit, receive and review applications from public and private agencies, organizations and research institutions for grants from the Spinal Cord Injury Research Fund created under ORS 431.294, to conduct research programs that focus on the treatment and cure of spinal cord injury.

(2) After review of a grant application, the board shall grant approval of the application and disburse moneys from the Spinal Cord Injury Research Fund if the application meets the criteria established by the board and if money exists in the fund.

(3) The board may solicit contributions to the fund from public and private sources.

(4) The board shall provide the Governor and the Legislative Assembly with a biennial report no later than January 31 of each odd-numbered year that summarizes the status of funds appropriated for spinal cord injury research and the progress of the board in encouraging spinal cord injury research. [1999 c.1044 §4]

Note: See note under 431.290.

431.294 Spinal Cord Injury Research Fund. (1) There is created within the State Treasury, separate and distinct from the General Fund, the Spinal Cord Injury Research Fund administered by the Spinal Cord Injury Research Board. Moneys in the fund are continuously appropriated for the purpose of carrying out ORS 431.292.

(2) The Spinal Cord Injury Research Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly; and

(b) Moneys obtained from gifts or grants by any public or private source received by the board under ORS 431.292 (3). [1999 c.1044 §5]

Note: See note under 431.290.

STATE LABORATORY

431.310 Bacteriological and other examinations and newborn screening by state laboratory; fees. (1) For the better protection of the public health the laboratory of the Department of Human Services shall make bacteriological and other examinations of water, milk, blood, secretions or tissues required by any state, county or city institution, or officer, and may make such examinations for any licensed physician in accordance with the rules of the department.

(2) The department shall establish by rule and collect fees for tests performed in the state public health laboratory, not to exceed:

(a) $50 per test for tests other than newborn screening tests; and

(b) $30 per specimen for newborn screening tests.

(3) All money received for such tests shall be deposited in the Public Health Account to be used for expenses of the state public health laboratory. [Amended by 1977 c.582 §18; 1981 c.630 §1; 1983 c.351 §1; 1993 c.374 §1; 2001 c.760 §1]

431.320 [Repealed by 1967 c.146 §1 (431.330, 431.335, 431.340, 431.345 and 431.350 enacted in lieu of 431.320)]

431.325 [1971 c.650 §17; 1977 c.582 §19; repealed by 1993 c.742 §95]

CONFERENCE OF LOCAL HEALTH OFFICIALS

431.330 Conference of Local Health Officials; officers of conference. (1) The Conference of Local Health Officials is created. The conference shall consist of all local health officers and public health administrators, appointed pursuant to ORS 431.418 and such other local health personnel as may be included by the rules of the conference.

(2) The Conference of Local Health Officials shall select one of its members as

chairperson, another as vice chairperson and another as secretary with such powers and duties necessary to the performance of the functions of such offices as the conference shall determine. The chairperson, after consultation with the Director of Human Services, shall appoint from the conference membership an executive committee. The executive committee with the chairperson shall advise the director in the administration of ORS 431.330 to 431.350. [1967 c.146 §2 (enacted in lieu of 431.320); 1977 c.582 §20; 1979 c.96 §1]

431.335 Meetings of conference; notice; expenses of members and officers of conference. (1) The Conference of Local Health Officials shall meet at least annually at a place, day and hour determined by the executive committee and the Director of Human Services. The conference may meet specially at such other times as the director or the executive committee considers necessary.

(2) The director shall cause at least 10 days' notice of each meeting date to be given to the members. The chairperson or an authorized representative of the chairperson shall preside at all meetings of the conference.

(3) Each conference member shall receive from the local board which the conference member represents from funds available under ORS 431.510, the actual and necessary travel and other expenses incurred by the conference member in attendance at no more than two meetings of the conference per year. Additionally, subject to applicable law regulating travel and other expenses for state officers, a local health official who is a member of the executive committee of the conference or who is the chairperson shall receive from funds available to the Department of Human Services, actual and necessary travel and other expenses for attendance at no more than six meetings per year of the executive committee called by the department. [1967 c.146 §3 (enacted in lieu of 431.320); 1977 c.582 §21]

431.340 Recommendations of conference. The Conference of Local Health Officials may submit to the Department of Human Services such recommendations on the rules and standards specified in ORS 431.345 and 431.350. [1967 c.146 §6 (enacted in lieu of 431.320); 1977 c.582 §22]

431.345 Minimum standards for financial assistance to local boards of health. In order to establish criteria for local boards of health to qualify for such financial assistance as may be made available, the Department of Human Services, upon receipt of written approval from the Conference of Local Health Officials shall adopt minimum standards governing:

(1) Education and experience for professional and technical personnel employed in local health departments, such standards to be consistent with any applicable merit system.

(2) Organization, operation and extent of activities which are required or expected of local health departments to carry out their responsibilities in implementing the public health laws of this state and the rules of the Department of Human Services. [1967 c.146 §5 (enacted in lieu of 431.320); 1977 c.582 §23]

431.350 Department to adopt rules for ORS 431.330 to 431.350. Upon receipt of written approval from the Conference of Local Health Officials the Department of Human Services shall adopt rules necessary for the administration of ORS 431.330 to 431.350. [1967 c.146 §4 (enacted in lieu of 431.320); 1977 c.582 §24]

LOCAL PUBLIC HEALTH SERVICES

431.375 Policy on local public health services. (1) The Legislative Assembly of the State of Oregon finds that each citizen of this state is entitled to basic public health services which promote and preserve the health of the people of Oregon. To provide for basic public health services the state, in partnership with county governments, shall maintain and improve public health services through county or district administered public health programs.

(2) County governments or health districts established under ORS 431.414 are the local public health authority responsible for management of local public health services unless the county contracts with private persons or an agency to act as the local public health authority or the county relinquishes authority to the state. If authority is relinquished, the state may then contract with private persons or an agency or perform the services.

(3) All expenditure of public funds utilized to provide public health services on the local level must be approved by the local public health authority unless the county has relinquished authority to the state or an exception has been approved by the Department of Human Services with the concurrence of the Conference of Local Health Officials. [1983 c.398 §1]

Note: 431.375 to 431.385 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.380 Distribution of funds for local purposes. (1) From funds available to the Department of Human Services for local public health purposes, regardless of the source, the department shall provide payments to the local public health authority on

a per capita or other equitable formula basis to be used for public health services. Funding formulas shall be determined by the department with the concurrence of the Conference of Local Health Officials.

(2) With respect to counties that have established joint public health services with another county, either by agreement or the formation of a district board of health, distribution of funds made available under the provisions of this section shall be prorated to such counties as provided by agreement or under ORS 431.510. [1983 c.398 §2]

Note: See note under 431.375.

431.385 Local annual plan; effect of failure to submit plan; approval; disapproval; variance. (1) The local public health authority shall submit an annual plan to the Department of Human Services for performing services pursuant to ORS 431.375 to 431.385 and 431.416. The annual plan shall be submitted no later than May 1 of each year or on a date mutually agreeable to the department and the local public health authority.

(2) If the local public health authority decides not to submit an annual plan under the provisions of ORS 431.375 to 431.385 and 431.416, the department shall become the local public health authority for that county or health district.

(3) The department shall review and approve or disapprove each plan. Variances to the local public health plan must be approved by the department. In consultation with the Conference of Local Health Officials, the department shall establish the elements of a plan and an appeals process whereby a local health authority may obtain a hearing if its plan is disapproved.

(4) Each local commission on children and families shall reference the local public health plan in the local coordinated comprehensive plan created pursuant to ORS 417.775. [1983 c.398 §3; 2003 c.553 §6]

Note: See note under 431.375.

LOCAL BOARDS OF HEALTH

431.405 Purpose of ORS 431.405 to 431.510. It is the purpose of ORS 431.405 to 431.510 to encourage improvement and standardization of health departments in order to provide a more effective and more efficient public health service throughout the state. [1961 c.610 §1]

431.410 Boards of health for counties. The governing body of each county shall constitute a board of health ex officio for each county of the state and may appoint a public health advisory board as provided in ORS 431.412 (5) to advise the governing body on matters of public health. [Amended by 1953 c.189 §3; 1961 c.610 §2; 1973 c.829 §20a]

431.412 County board of health; formation; composition; advisory board. (1) The governing body of any county shall establish a county board of health, when authorized to do so by a majority of electors of the county at any general or special election, and may, if such authorization is made, establish a public health advisory board as provided in subsection (5) of this section.

(2) The county board of health shall consist of:

(a) One member of the county governing body selected by the body.

(b) One member of a common school district board having jurisdiction over the entire county or of the education service district board who resides in the county and is selected by the education service district board, or the designee of that member.

(c) One physician who has been licensed to practice medicine in this state by the Board of Medical Examiners for the State of Oregon.

(d) One dentist who has been licensed to practice dentistry in this state by the Oregon Board of Dentistry.

(e) Three other members.

(3) The members referred to in subsection (2)(c) to (e) of this section shall be appointed by the members serving under subsection (2)(a) and (b) of this section. The term of office of each of such appointed members shall be four years, terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years, as designated by the appointing members of the board.

(4) Whenever a county board of health is created under this section, such board shall be in lieu of the board provided for in ORS 431.410.

(5) The governing body of the county may, as provided in subsection (1) of this section, appoint a public health advisory board for terms of four years, the terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years as designated by the governing body. The advisory board shall meet regularly to advise the county board of health on matters of public health. The advisory board shall consist of:

(a) Persons licensed by this state as health care practitioners.

(b) Persons who are well informed on public health matters. [Formerly 431.470; 1963 c.544 §49; 1977 c.582 §25; 1981 c.127 §1; 1987 c.618 §2; 1991 c.167 §26; 2003 c.226 §22]

431.414 District board of health; formation; composition; advisory board. (1) Two or more contiguous counties may combine for the purpose of forming a district health unit when the governing body of each of the counties concerned adopt resolutions signifying their intention to do so.

(2) The governing bodies of the counties forming the district may meet together, elect a chairperson and transact business as a district board of health whenever a majority of the members of the governing bodies from each of the participating counties are present at any meeting.

(3) In lieu of the procedure in subsection (2) of this section, the governing bodies of the counties forming the district may, by a two-thirds vote of the members from each participating county, establish and, except as provided in paragraph (f) of this subsection, appoint a district board of health which shall consist of:

(a) One member from each participating county governing body selected by such body.

(b) One member from a school administrative unit within the district.

(c) One member from the administrative staff of a city within the district.

(d) Two physicians who have been licensed to practice medicine in this state by the Board of Medical Examiners for the State of Oregon and who are residents of the district.

(e) One dentist who has been licensed to practice dentistry in this state by the Oregon Board of Dentistry and who is a resident of the district.

(f) One person who is a resident of the district and who is to be appointed by the members serving under paragraphs (a) to (c) of this subsection.

(4) The term of office of the members referred to in subsection (3)(a) to (f) of this section shall be four years, the terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years, as may be designated by two-thirds vote of the members from each participating county.

(5) Whenever a district board of health is created under this section, such board shall be in lieu of the board provided for in ORS 431.410 or 431.412.

(6) The governing bodies of the counties making up the district may appoint a public health advisory board for terms of four years, the terms to expire annually on February 1. The first appointments shall be for terms of one, two, three or four years as designated by the governing body. The advisory board shall meet regularly to advise the district board of health on matters of public health. The advisory board shall consist of:

(a) Persons licensed by this state as health care practitioners.

(b) Persons who are well informed on public health matters. [Formerly 431.610; 1973 c.829 §21; 1977 c.582 §26; 1987 c.618 §3]

431.415 Powers and duties of local health boards; fee schedules. (1) The district or county board of health is the policymaking body of the county or district in implementing the duties of local departments of health under ORS 431.416.

(2) The district or county board of health shall adopt rules necessary to carry out its policies under subsection (1) of this section. The county or district board of health shall adopt no rule or policy which is inconsistent with or less strict than any public health law or rule of the Department of Human Services.

(3) With the permission of the county governing body, a county board may, and with the permission of the governing bodies of the counties involved, a district board may, adopt schedules of fees for public health services reasonably calculated not to exceed the cost of the services performed. The health department shall charge fees in accordance with such schedule or schedules adopted. [1961 c.610 §6; 1973 c.829 §22; 1977 c.582 §27]

431.416 Local public health authority or health district; duties. The local public health authority or health district shall:

(1) Administer and enforce the rules of the local public health authority or the health district and public health laws and rules of the Department of Human Services.

(2) Assure activities necessary for the preservation of health or prevention of disease in the area under its jurisdiction as provided in the annual plan of the authority or district are performed. These activities shall include but not be limited to:

(a) Epidemiology and control of preventable diseases and disorders;

(b) Parent and child health services, including family planning clinics as described in ORS 435.205;

(c) Collection and reporting of health statistics;

(d) Health information and referral services; and

(e) Environmental health services. [1961 c.610 §8; 1973 c.829 §23; 1977 c.582 §28; 1983 c.398 §4; 2001 c.900 §150]

431.418 Local public health administrator; health officer; duties; salary. (1) Each district board of health shall appoint a qualified public health administrator to su-

pervise the activities of the district in accordance with law. Each county governing body in a county that has created a county board of health under ORS 431.412 shall appoint a qualified public health administrator to supervise the activities of the county health department in accordance with law. In making such appointment, the district or county board of health shall consider standards for selection of administrators prescribed by the Department of Human Services.

(2) When the public health administrator is a physician licensed by the Board of Medical Examiners for the State of Oregon, the administrator shall serve as health officer for the district or county board of health. When the public health administrator is not a physician licensed by the Board of Medical Examiners for the State of Oregon, the administrator will employ or otherwise contract for services with a health officer who shall be a licensed physician and who will perform those specific medical responsibilities requiring the services of a physician and shall be responsible to the public health administrator for the medical and paramedical aspects of the health programs.

(3) The public health administrator shall:

(a) Serve as the executive secretary of the district or county health board, act as the administrator of the district or county health department and supervise the officers and employees appointed under paragraph (b) of this subsection.

(b) Appoint with the approval of the health board, administrators, medical officers, public health nurses, environmental health specialists and such other employees as are necessary to carry out the duties and responsibilities of the office.

(c) Provide the board at appropriate intervals information concerning the activities of the county health department and submit an annual budget for the approval of the county governing body except that, in the case of the district public health administrator, the budget shall be submitted to the governing bodies of the participating counties for approval.

(d) Act as the agent of the Department of Human Services in enforcing state public health laws and rules of the Department of Human Services, including such sanitary inspection of hospitals and related institutions as may be requested by the Department of Human Services.

(e) Perform such other duties as may be required by law.

(4) The public health administrator shall serve until removed by the appointing board. The public health administrator shall engage in no occupation which conflicts with official duties and shall devote sufficient time to duties as public health administrator as may be necessary to fulfill the requirements of subsection (3) of this section. However, if the board of health is not created under ORS 431.412, it may, with the approval of the Director of Human Services, require less than full-time service of the public health administrator.

(5) The public health administrator shall receive a salary fixed by the appointing board and shall be reimbursed for actual and necessary expenses incurred in the performance of duties. [1961 c.610 §7; 1973 c.829 §24; 1977 c.582 §29; 1981 c.127 §2; 1993 c.26 §1; 2003 c.14 §242; 2003 c.547 §112]

431.420 [Amended by 1961 c.610 §9; 1973 c.829 §25; 1977 c.582 §30; repealed by 1981 c.127 §4]

431.430 [Amended by 1961 c.610 §10; 1973 c.829 §26; repealed by 1981 c.127 §4]

431.440 Public health administrators have police powers. All district and county public health administrators shall possess the powers of constables or other peace officers in all matters pertaining to the public health. [Amended by 1961 c.610 §11; 1973 c.829 §27]

431.450 [Amended by 1961 c.610 §14; 1973 c.829 §28; repealed by 1981 c.127 §4]

431.460 [Amended by 1961 c.610 §12; 1973 c.829 §29; repealed by 1981 c.127 §4]

431.470 [Amended by 1961 c.610 §3; renumbered 431.412]

431.480 City boards abolished; expenditure of funds obtained from school district. (1) All city boards of health are abolished.

(2) Any school district may appropriate money to be expended for public health measures in such school district by the county or district board of health. [Amended by 1961 c.610 §5; 1973 c.829 §30]

431.490 [Repealed by 1961 c.610 §18]

431.500 [Amended by 1953 c.189 §3; repealed by 1961 c.610 §18]

431.510 Quarters and funds for local health boards. (1) The governing body of the county shall provide adequate quarters and facilities for the office and health work of the county board of health and shall appropriate sufficient funds for the administration of the board and the operation of the health department.

(2) Where a district board is established under ORS 431.414, the governing body of each participating county shall appropriate annually a sum which shall be specifically designated for the operation of the board of health and the district department of health. [Amended by 1961 c.610 §13; 1973 c.829 §31]

431.520 Disposal of local health records. Public records, as defined in ORS 192.005, of district and county departments of health and community mental health clin-

ics may be destroyed or otherwise disposed of in accordance with rules prescribed by the State Archivist. However, no records shall be required to be maintained for more than seven years from the date of the last entry for purposes of preserving evidence for any action, suit or proceeding. [1969 c.446 §2; 1973 c.829 §32]

431.530 Authority of local health administrator in emergency. (1) The local public health administrator may take any action which the Department of Human Services or its director could have taken, if an emergency endangering the public health occurs within the jurisdiction of any local public health administrator and:

(a) The circumstances of the emergency are such that the department or its director cannot take action in time to meet the emergency; and

(b) Delay in taking action to meet the emergency will increase the hazard to public health.

(2) Any local public health administrator who acts under subsection (1) of this section shall report the facts constituting the emergency and any action taken under the authority granted by subsection (1) of this section to the Director of Human Services by the fastest possible means. [1973 c.829 §9; 1977 c.582 §31]

431.550 Authority of Department of Human Services to collect information from local public health administrators. Nothing in ORS 431.412, 431.418 and this section shall be construed to limit the authority of the Department of Human Services to require facts and statistics from local public health administrators under its general supervisory power over all matters relating to the preservation of life and health of the people of the state. [1981 c.127 §3]

431.605 [1971 c.650 §44; repealed by 1973 c.358 §15]

EMERGENCY MEDICAL SERVICES AND TRAUMA SYSTEMS

431.607 Department of Human Services to develop comprehensive emergency medical services and trauma system. In cooperation with representatives of the emergency medical services professions, the Department of Human Services shall develop a comprehensive emergency medical services and trauma system. The department shall report progress on the system to the Legislative Assembly. [1985 c.191 §1]

431.608 [1987 c.918 §9; repealed by 1997 c.546 §4]

431.609 Designation of trauma areas; trauma system hospitals. (1) With the advice of the State Trauma Advisory Board, the Department of Human Services shall:

(a) Develop and monitor a statewide trauma system; and

(b) Designate within the state, trauma areas consistent with local resources, geography and current patient referral patterns.

(2) Each trauma area shall have:

(a) Central medical control for all field care and transportation consistent with geographic and current communications capability.

(b) The development of triage protocols.

(c) One or more hospitals categorized according to trauma care capabilities using standards adopted by the department by rule. Such rules shall be modeled after the American College of Surgeons Committee on Trauma standards.

(d) The establishment of area trauma advisory boards to develop trauma system plans for each trauma area.

(3) On and after July 1, 1986, the department may designate trauma system hospitals in accordance with area trauma advisory board plans which meet state objectives and standards.

(4) Trauma system plans shall be implemented by June 30, 1987, in Health Systems Area I, and June 30, 1988, in Health Systems Areas II and III. [1985 c.191 §2]

431.610 [Amended by 1961 c.610 §4; renumbered 431.414]

431.611 Department to adopt rules; contents. (1) Prior to approval and implementation of area trauma plans submitted to the Department of Human Services by area trauma advisory boards, the department shall adopt rules pursuant to ORS chapter 183 which specify state trauma objectives and standards, hospital categorization criteria and criteria and procedures to be utilized in designating trauma system hospitals.

(2) For approved area trauma plans recommending designation of trauma system hospitals, the department rules shall provide for:

(a) The transport of a member of a health maintenance organization, or other managed health care system, as defined by rule, to a hospital that contracts with the health maintenance organization when central medical control determines that the condition of the member permits such transport; and

(b) The development and utilization of protocols between designated trauma hospitals and health maintenance organizations, or other managed health care systems, as defined by rule, including notification of admission of a member to a designated trauma hospital within 48 hours of admission, and coordinated discharge planning between a

designated trauma hospital and a hospital that contracts with a health maintenance organization to facilitate transfer of the member when the medical condition of the member permits. [1985 c.191 §4]

431.613 Area trauma advisory boards; duties; members. (1) Area trauma advisory boards shall meet as often as necessary to identify specific trauma area needs and problems and propose to the Department of Human Services area trauma system plans and changes that meet state standards and objectives. The department acting with the advice of the State Trauma Advisory Board will have the authority to implement these plans.

(2) In concurrence with the Governor, the department shall select members for each area from lists submitted by local associations of emergency medical technicians, emergency nurses, emergency physicians, surgeons, hospital administrators, emergency medical services agencies and citizens at large. Members shall be broadly representative of the trauma area as a whole and shall consist of at least 15 members per area trauma advisory board, including:

(a) Three surgeons;

(b) Two physicians serving as emergency physicians;

(c) Two hospital administrators from different hospitals;

(d) Two nurses serving as emergency nurses;

(e) Two emergency medical technicians serving different emergency medical services;

(f) Two representatives of the public at large selected from among those submitting letters of application in response to public notice by the department. Public members shall not have an economic interest in any decision of the health care service areas;

(g) One representative of any bordering state which is included within the patient referral area;

(h) One anesthesiologist; and

(i) One ambulance service owner or operator or both. [1985 c.191 §6]

431.615 [1971 c.650 §45; repealed by 1973 c.358 §15]

431.617 Liability of provider. No provider shall be held liable for acting in accordance with approved trauma system plans. [1985 c.191 §7]

431.619 Continuous duties of department. The Department of Human Services shall continuously identify the causes of trauma in Oregon, and propose programs of prevention thereof for consideration by the Legislative Assembly or others. [1985 c.191 §8]

431.620 [Repealed by 1961 c.610 §18]

431.623 Program created in Department of Human Services. (1) The Emergency Medical Services and Trauma Systems Program is created within the Department of Human Services for the purpose of administering and regulating ambulances, training and certifying emergency medical technicians, establishing and maintaining emergency medical systems including trauma systems and obtaining appropriate data from the Oregon Injury Registry as necessary for trauma reimbursement, system quality assurance and assuring cost efficiency.

(2) For purposes of ORS 431.607 to 431.619 and ORS chapter 682, the duties vested in the department shall be performed by the Emergency Medical Services and Trauma Systems Program.

(3) The program shall be administered by a director.

(4) With moneys transferred to the program by ORS 442.625, the program shall apply those moneys to:

(a) Developing state and regional standards of care;

(b) Developing a statewide educational curriculum to teach standards of care;

(c) Implementing quality improvement programs;

(d) Creating a statewide data system for prehospital care; and

(e) Providing ancillary services to enhance Oregon's emergency medical service system. [1991 c.784 §1; 1999 c.1056 §6]

Note: 431.623 to 431.633 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.625 [1971 c.650 §46; repealed by 1977 c.582 §61 and 1977 c.751 §17a]

431.627 Designation of other trauma centers. (1) In addition to and not in lieu of ORS 431.607 to 431.617, the Department of Human Services shall designate trauma centers in areas that are within the jurisdiction of trauma advisory boards other than in the area within the jurisdiction of area trauma advisory board 1.

(2) The department shall enter into contracts with designated trauma centers and monitor and assure quality of care and appropriate costs for trauma patients meeting trauma system entry criteria.

(3) All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the department, the State Trauma Advisory Board or an area trauma advisory board in connection with obtaining the data necessary to perform patient care quality assurance

functions shall be confidential pursuant to ORS 192.501 to 192.505.

(4)(a) All data received or compiled by the State Trauma Advisory Board or any area trauma advisory board in conjunction with department monitoring and assuring quality of trauma patient care shall be confidential and privileged, nondiscoverable and inadmissible in any proceeding. No person serving on or communicating information to the State Trauma Advisory Board or an area trauma advisory board shall be examined as to any such communications or to the findings or recommendations of such board. A person serving on or communicating information to the State Trauma Advisory Board or an area trauma advisory board shall not be subject to an action for civil damages for actions taken or statements made in good faith. Nothing in this section affects the admissibility in evidence of a party's medical records not otherwise confidential or privileged dealing with the party's medical care. The confidentiality provisions of ORS 41.675 and 41.685 shall also apply to the monitoring and quality assurance activities of the State Trauma Advisory Board, area trauma advisory boards and the department.

(b) As used in this section, "data" includes but is not limited to written reports, notes, records and recommendations.

(5) Final reports by the department, the State Trauma Advisory Board and area trauma advisory boards shall be available to the public.

(6) The department shall publish a biennial report of the Emergency Medical Services and Trauma Systems Program and trauma systems activities. [1991 c.784 §3]

Note: See note under 431.623.

431.630 [Repealed by 1961 c.610 §18]

431.633 Reporting of certain patients; reimbursement for certain services. (1) Designated trauma centers and providers, physical rehabilitation centers, alcohol and drug rehabilitation centers and ambulances shall develop a monthly log of all unsponsored, inadequately insured trauma system patients determined by the hospital to have an injury severity score greater than or equal to 13, and submit monthly to the Emergency Medical Services and Trauma Systems Program the true costs and unpaid balance for the care of these patients.

(2) No reimbursement for these patients shall occur until:

(a) All information required by the Emergency Medical Services and Trauma Systems Program rules is submitted to the Oregon Injury Registry; and

(b) The Emergency Medical Services and Trauma Systems Program confirms that the injury severity score, as defined by the Department of Human Services by rule, is greater than or equal to 13.

(3) The Emergency Medical Services and Trauma Systems Program shall cause providers to be reimbursed in the following decreasing order of priority:

(a) Designated trauma centers and providers;

(b) Physical rehabilitation centers;

(c) Alcohol and drug rehabilitation centers; and

(d) Ambulances.

(4) Subject to the availability of funds, the Emergency Medical Services and Trauma Systems Program shall cause the designated trauma centers and providers to be paid first in full. Subsequent providers shall be paid from the balance remaining according to priority.

(5) Any matching funds, available pursuant to the federal Trauma Care Systems and Development Act of 1990 (H.R. 1602), that are available for purposes of the Emergency Medical Services and Trauma Systems Program may be used for related studies and projects and reimbursement for uncompensated care. [1991 c.784 §4]

Note: See note under 431.623.

431.640 [Repealed by 1961 c.610 §18]

431.650 [Repealed by 1961 c.610 §18]

431.660 [Repealed by 1961 c.610 §18]

431.670 [Repealed by 1961 c.610 §18]

431.671 Emergency Medical Services for Children Program; duties of Department of Human Services. (1) Subject to available funding from gifts, grants or donations, the Emergency Medical Services for Children Program is established in the Department of Human Services. The Emergency Medical Services for Children Program shall operate in cooperation with the Emergency Medical Services and Trauma Systems Program to promote the delivery of emergency medical and trauma services to the children of Oregon.

(2) The Department of Human Services shall:

(a) Employ or contract with professional, technical, research and clerical staff as required to implement this section.

(b) Provide technical assistance to the State Trauma Advisory Board on the integration of an emergency medical services for children program into the statewide emergency medical services and trauma system.

(c) Provide advice and technical assistance to area trauma advisory boards on the integration of an emergency medical services

for children program into area trauma system plans.

(d) Establish an Emergency Medical Services for Children Advisory Committee.

(e) Establish guidelines for:

(A) The approval of emergency and critical care medical service facilities for pediatric care, and for the designation of specialized regional pediatric critical care centers and pediatric trauma care centers.

(B) Referring children to appropriate emergency or critical care medical facilities.

(C) Necessary prehospital and other pediatric emergency and critical care medical service equipment.

(D) Developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate level of care, including critical care, trauma care or pediatric subspecialty care.

(E) Protocols for prehospital and hospital facilities encompassing all levels of pediatric emergency services, pediatric critical care and pediatric trauma care.

(F) Rehabilitation services for critically ill or injured children.

(G) An interfacility transfer system for critically ill or injured children.

(H) Initial and continuing professional education programs for emergency medical services personnel, including training in the emergency care of infants and children.

(I) A public education program concerning the Emergency Medical Services for Children Program including information on emergency access telephone numbers.

(J) The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency and critical care medical service facilities for the purpose of quality improvement by such facilities, subject to relevant confidentiality requirements.

(K) The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency and critical care services.

(L) Coordination and cooperation between the Emergency Medical Services for Children Program and other public and private organizations interested or involved in emergency and critical care for children. [2001 c.717 §1]

Note: 431.671 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

HEALTH HAZARD ANNEXATIONS OR DISTRICT FORMATION

431.705 Definitions for ORS 431.705 to 431.760. As used in ORS 431.705 to 431.760, unless the context requires otherwise:

(1) "Affected territory" means an area that is the subject of a proceedings under ORS 431.705 to 431.760 where there is a danger to public health or an alleged danger to public health.

(2) "Boundary commission" means a local government boundary commission created under ORS 199.410 to 199.430, 199.435 to 199.464, 199.480 to 199.505 and 199.510.

(3) "Commission" means the Environmental Quality Commission.

(4) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:

(a) Impure or inadequate domestic water.

(b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste.

(c) Inadequate improvements for drainage of surface water and other fluid substances.

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

(6) "Director" means the Director of Human Services.

(7) "District" means any one of the following:

(a) A metropolitan service district formed under ORS chapter 268.

(b) A county service district formed under ORS chapter 451.

(c) A sanitary district formed under ORS 450.005 to 450.245.

(d) A sanitary authority, water authority or joint water and sanitary authority formed under ORS 450.600 to 450.989.

(e) A domestic water supply district formed under ORS chapter 264.

(8) "Requesting body" means the county court, or local or district board of health that makes a request under ORS 431.715.

(9) "Service facilities" means water or sewer installations or works. [1973 c.361 §1; 1975 c.266 §1; 1981 c.452 §1; 1993 c.577 §20; 2001 c.900 §151]

431.710 When department to initiate district formation or annexation. (1) ORS 431.705 to 431.760 shall not apply if the affected territory could be subject to an annexation proceeding under ORS 222.840 to 222.915.

(2) If the Department of Human Services, in accordance with ORS 431.705 to 431.760, finds that a danger to public health exists within the affected territory and that such danger could be removed or alleviated by the construction, maintenance and operation of service facilities, the department shall initiate proceedings for the formation of or annexation to a district to serve the affected territory. If the affected territory is located within a district that has the authority to provide the service facilities, the department shall order the district to provide service facilities in the affected territory. [1973 c.361 §2; 1981 c.888 §3]

431.715 Resolution requesting department to initiate formation or annexation. (1) The county court or the local or district board of health having jurisdiction over territory where it believes conditions dangerous to the public health exist shall adopt a resolution requesting the Department of Human Services to initiate proceedings for the formation of a district or annexation of territory to, or delivery of appropriate water or sewer services by, an existing district without vote or consent in the affected territory. The resolution shall:

(a) Describe the boundaries of the affected territory;

(b) Describe the conditions alleged to be causing a danger to public health;

(c) Request the department to ascertain whether conditions dangerous to public health exist in the affected territory and whether such conditions could be removed or alleviated by the provision of service facilities; and either

(d) Recommend a district that the affected territory could be included in or annexed to for the purpose of providing the requested service facilities; or

(e) Recommend that an existing district provide service facilities in the affected territory.

(2) The requesting body shall cause a certified copy of the resolution, together with the time schedule and preliminary plans and specifications, prepared in accordance with subsection (3) of this section, to be forwarded to the department.

(3) The requesting body shall cause a study to be made and preliminary plans and specifications prepared for the service facilities considered necessary to remove or alleviate the conditions causing a danger to public health. The requesting body shall prepare a schedule setting out the steps necessary to put the facilities into operation and the time required for each step in implementation of the plans.

(4) If the preliminary plans involve facilities that are subject to the jurisdiction of the Environmental Quality Commission, a copy of the documents submitted to the department under subsection (2) of this section shall be submitted to the commission for review, in accordance with ORS 431.725, of those facilities that are subject to its jurisdiction. No order or findings shall be adopted under ORS 431.735 or 431.756 until the plans of the requesting body for such facilities, if any, have been approved by the commission. [1973 c.361 §3; 1981 c.888 §4]

431.717 Compelling adoption of resolution. (1) Any person who may be adversely affected by the failure of a county court to adopt a resolution as required by ORS 431.715 (1) may seek to compel the adoption of such resolution through a writ of mandamus under ORS 34.105 to 34.240.

(2) The prevailing party in a proceeding under ORS 34.105 to 34.240 authorized by subsection (1) of this section is entitled to reasonable attorney fees in addition to costs and necessary disbursements. [1981 c.888 §6]

431.720 Commission to review certain plans; approval of plans. (1) Upon receipt of the documents submitted under ORS 431.715 (4), the Environmental Quality Commission shall review them to determine whether the conditions dangerous to public health within the affected territory could be removed or alleviated by the provision of service facilities that are subject to the jurisdiction of the commission.

(2) If the commission considers such proposed facilities and the time schedule for installation of such facilities adequate to remove or alleviate the dangerous conditions, it shall approve the part of the plans that are subject to its jurisdiction and certify its approval to the Department of Human Services.

(3) If the commission considers the proposed facilities or time schedule inadequate, it shall disapprove the part of the plans that are subject to its jurisdiction and certify its disapproval to the department. The commission shall also inform the requesting body of its approval or disapproval and, in case of disapproval, of the particular matters causing the disapproval. The requesting body may then submit additional or revised plans. [1973 c.361 §4]

431.725 Department to review resolution; notice of hearing. (1) Upon receipt of the certified copy of a resolution adopted under ORS 431.715, the Department of Human Services shall contact the requesting body within 30 days of receipt of the request and schedule the review and investigation of conditions in the affected territory. The department shall review and investigate conditions in the affected territory in accordance

with the agreed upon schedule unless both parties agree to an extension. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order setting a time and place for a hearing on the resolution. The hearing shall be held within the affected territory, or at a place near the territory if there is no suitable place within the territory at which to hold the hearing, not less than 30 or more than 50 days after the date of the order.

(2) Upon issuance of an order for a hearing, the department shall immediately give notice of the time and place of the hearing on the resolution by publishing the order and resolution in a newspaper of general circulation within the territory once each week for two successive weeks and by posting copies of the order in four public places within the territory prior to the hearing. [1973 c.361 §5; 1981 c.452 §2]

431.730 Conduct of hearing. (1) At the hearing on the resolution, any interested person shall be given a reasonable opportunity to be heard or to present written statements. The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory and whether such conditions could be removed or alleviated by the provision of service facilities. Hearings under this section shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. It shall be conducted in accordance with the provisions of ORS chapter 183. The Department of Human Services shall publish a notice of the issuance of said findings and recommendations in the newspaper utilized for the notice of hearing under ORS 431.725 (2) advising of the opportunity for presentation of a petition under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section, any person who may be affected by the findings, or the affected district, may petition the Director of Human Services according to rules of the department to present written or oral arguments relative to the proposal. If a petition is received, the director may set a time and place for receipt of argument. [1973 c.361 §6; 1975 c.266 §2; 1999 c.849 §§81,82; 2003 c.75 §35]

431.735 Director's authority under ORS 431.705 to 431.760. (1) If the Director of Human Services after investigation finds that no danger to public health exists because of conditions within the affected territory, or that such a danger does exist but the conditions causing it could not be removed or alleviated by the provision of service facilities, the director shall issue an order terminating the proceedings under ORS 431.705 to 431.760 with reference to the affected territory.

(2) If the director finds, after investigation and the hearing required by ORS 431.725, that a danger to public health exists because of conditions within the territory, and that such conditions could be removed or alleviated by the provisions of service facilities in accordance with the plans and specifications and the time schedule proposed, the director shall enter findings in an order, directed to the officers described by ORS 431.740, setting out the service facilities to be provided.

(3) If the director determines that a danger to public health exists because of conditions within only part of the affected territory, or that such conditions could be removed or alleviated in only part of the affected territory by the provision of service facilities, the director may, subject to conditions stated in ORS 431.705 to 431.760, reduce the boundaries of the affected territory to that part which presents a danger or in which the conditions could be removed or alleviated if the area to be excluded would not be surrounded by the territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the danger to public health existing within the territory remaining to be annexed. The findings shall describe the boundaries of the area as reduced by the director.

(4) In determining whether to exclude any area the director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the area remaining to be annexed and whether the exclusion would result in an illogical boundary for the provision of services.

(5) The requesting body or the boundary commission shall, when requested, aid in the determinations made under subsections (3) and (4) of this section and, if necessary, cause a study to be made. [1973 c.361 §7; 1975 c.266 §3]

431.740 Notice to boundary commission; service facilities to conform to plans and schedules. (1) If a boundary commission has jurisdiction of the affected territory, the Director of Human Services shall file the findings and order with such boundary commission. If the affected territory is not within the jurisdiction of a boundary commission, the director shall file the findings and order with the county court of the county having jurisdiction of the territory.

(2) The Department of Human Services and the Environmental Quality Commission shall use their applicable powers of enforce-

ment to insure that the service facilities are constructed or installed in conformance with the approved plans and schedules. [1973 c.361 §8]

431.745 Petition for alternative plan. (1) At any time after the adoption of a resolution under ORS 431.715, a petition, signed by not less than 51 percent of the electors registered in the affected territory, may be filed with the Department of Human Services. The petition shall suggest an alternative plan to the proposed formation or annexation for removal or alleviation of the conditions dangerous to public health. The petition shall state the intent of the residents to seek annexation to an existing city or special district authorized by law to provide service facilities necessary to remove or alleviate the dangerous conditions. The petition shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities and an estimate of the time required to construct such facilities and place them in operation.

(2) Upon receipt of the petition, the department shall immediately forward a copy of the petition to the Environmental Quality Commission, if the plan accompanying the petition involves facilities that are subject to the jurisdiction of the commission. The department also shall forward a copy of the petition to the requesting body and to the county court or boundary commission where the department filed its findings under ORS 431.740 and direct the county court or boundary commission to stay the proceedings pending the review permitted under this section and ORS 431.750. [1973 c.361 §9; 1983 c.83 §84]

431.750 Commission review of alternative plan; certification of alternative plan. (1) If the alternative plan submitted under ORS 431.745 (1) involves service facilities that are subject to the jurisdiction of the commission, the alternative plan shall be submitted to and reviewed by the Environmental Quality Commission and shall be approved or rejected by the commission within 30 days from the date of filing with the Department of Human Services. In reviewing the alternative plan, the commission shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health. If the commission determines that the original plan provides the better and most expeditious method of removing or alleviating the dangerous conditions, it shall disapprove the alternative plan and inform the department of its decision. The department shall order the proceedings on the finding filed under ORS 431.740 to resume.

(2) If the commission finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners shall be granted six months within which to present to the commission information showing:

(a) That the affected territory has annexed to a city or special district authorized by law to provide the service facilities necessary to remove or alleviate the dangerous conditions, and that the financing of the extension of such facilities to the territory has been assured.

(b) Detailed plans and specifications for the construction of such facilities.

(c) A time schedule for the construction of such facilities.

(d) That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the formation or annexation proposed by the original plans.

(3) The commission shall review the plan presented to it by the petitioners under subsection (2) of this section and shall promptly certify to the department whether the requirements of subsection (2) of this section have been met. If the requirements have been met, the department shall certify the alternative plan to the county court or boundary commission having jurisdiction and direct it to proceed in accordance with the alternative plan and in lieu of the plans filed under ORS 431.740. If the requirements of subsection (2) of this section are not met by the petitioners, the department shall certify that fact to the county court or boundary commission having jurisdiction and direct it to continue the proceedings on the plans filed under ORS 431.740. [1973 c.361 §10]

431.755 [1973 c.361 §11; repealed by 1975 c.266 §4 (431.756 enacted in lieu of 431.755)]

431.756 Judicial review. Judicial review of orders under ORS 431.705 to 431.760 shall be as provided in ORS 183.480, 183.485, 183.490 and 183.500. [1975 c.266 §5 (enacted in lieu of 431.755)]

431.760 Certain persons prohibited from participating in proceedings. (1) A person who owns property or resides within affected territory that is subject to proceedings under the provisions of ORS 431.705 to 431.760 shall not participate in an official capacity in any investigation, hearing or recommendation relating to such proceedings. If the Director of Human Services is such a person, the director shall so inform the Governor, who shall appoint another person to fulfill the duties of the director in any investigation, hearing or recommendation relating to the such proceeding.

(2) Subsection (1) of this section does not excuse a member of a county court from voting on the order required by ORS 198.792 (2) or 451.445 (1). [1973 c.361 §12]

RECOMBINANT DNA

431.805 Definitions for ORS 431.805 and 431.810. As used in ORS 431.805 and 431.810:

(1) "Person" includes an individual, partnership, association, corporation, private institution or governmental entity.

(2) "Recombinant DNA research" means research on molecules that consist of segments of deoxyribonucleic acid from different organisms which are joined together in cell-free systems and which have the capacity to infect and replicate in some host cell, either autonomously or as an integrated part of the host genome. [1983 c.358 §1]

Note: 431.805 and 431.810 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.810 Recombinant DNA research to comply with federal guidelines. Persons carrying out recombinant DNA research must comply with the recombinant research guidelines adopted by the National Institutes of Health and any subsequent modifications thereof. [1983 c.358 §2]

Note: See note under 431.805.

431.815 [1983 c.358 §§3,4; repealed by 1999 c.108 §1]

SPECIAL PROGRAMS

431.825 Fetal alcohol syndrome pamphlets. The Department of Human Services shall provide to the counties of this state pamphlets described in ORS 106.081. The department may produce such pamphlets with moneys available for the purpose or may accept a gift of such pamphlets from any public or private source if the content is acceptable to the department. [1987 c.340 §4]

Note: 431.825 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.827 Female genital mutilation prevention and education activities. The Department of Human Services shall establish and implement appropriate education, prevention and outreach activities in communities that traditionally practice female circumcision, excision or infibulation for the purpose of informing:

(1) Those communities of the health risks and emotional trauma inflicted by the practices;

(2) Those communities and the medical community as to the existence and ramifications of ORS 163.207; and

(3) Those communities that the practices constitute physical injuries to a child for purposes of ORS 419B.005. [1999 c.737 §2]

Note: 431.827 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.830 Acquired immune deficiency syndrome services and programs. (1) The Department of Human Services shall establish an acquired immune deficiency syndrome program:

(a) To provide education and prevention services to its clients; and

(b) To provide education and prevention services to the public.

(2) Programs authorized by this section may be operated by the department directly or under contract with public and private agencies. [1987 c.114 §1; 2001 c.900 §152]

Note: 431.830 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

SMOKING CESSATION AND TOBACCO USE REDUCTION

431.831 Smoking cessation program reimbursement; rules. (1) The Department of Human Services shall develop a program to reimburse smoking cessation program providers for services provided to residents of this state who are not insured for smoking cessation costs.

(2) The department shall adopt rules for the program established under subsection (1) of this section that include but are not limited to criteria for provider and participant eligibility and other program specifications. The rules shall establish a maximum reimbursement limit for each participant.

(3) Costs for smoking cessation programs funded under subsection (1) of this section are eligible for reimbursement from funds received by the State of Oregon from tobacco products manufacturers under the Master Settlement Agreement of 1998. [1999 c.1025 §1]

Note: 431.831 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.832 Tobacco Use Reduction Account established. (1) There is established in the General Fund the Tobacco Use Reduction Account.

(2) Amounts credited to the Tobacco Use Reduction Account are continuously appro-

priated to the Department of Human Services for the funding of prevention and education programs designed to reduce cigarette and tobacco use. [1997 c.2 §13]

Note: 431.832 to 431.836 were adopted by the people by initiative petition and were added to and made a part of ORS chapter 431 but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

431.834 Department to adopt rules; contents. The Department of Human Services shall develop and adopt rules for awarding grants to programs for educating the public on the risk of tobacco use, including but not limited to:

(1) Educating children on the health hazards and consequences of tobacco use; and

(2) Promoting enrollment in smoking cessation programs and programs that prevent smoking-related diseases including cancer and other diseases of the heart, lungs and mouth. [1997 c.2 §14]

Note: See note under 431.832.

431.836 Department to prepare report. During each biennium, the Department of Human Services shall prepare a report regarding the awarding of grants from the Tobacco Use Reduction Account and the formation of public-private partnerships in connection with the receipt of funds from the account. The department shall present the report to the Governor and to those committees of the Legislative Assembly to which matters of public health are assigned. [1997 c.2 §15]

Note: See note under 431.832.

REGULATION OF TOBACCO SALES

431.840 Free distribution to minors prohibited; restriction on sales; notice. (1) It shall be unlawful to do any of the following:

(a) To distribute free tobacco products to persons under 18 years of age as part of a marketing strategy to encourage the use of tobacco products.

(b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3) of this section in a location clearly visible to the seller and the purchaser that sale of tobacco products to persons under 18 years of age is prohibited.

(c) To sell cigarettes in any form other than a sealed package.

(2) As used in this section "tobacco products" means bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and shall include cigarettes as defined in ORS 323.010 (1).

(3) The notice shall be substantially as follows:

NOTICE

The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits the crime of endangering the welfare of a minor, pursuant to ORS 163.575.

[1989 c.764 §1; 2001 c.187 §1]

Note: 431.840 to 431.853 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.845 Civil penalty for violation of ORS 431.840. (1) The civil penalty for violation of any provision of ORS 431.840 shall not be less than $100 nor exceed $500.

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

Note: See note under 431.840.

431.850 Procedure applicable to penalty. Any civil penalty under ORS 431.845 shall be imposed as provided by ORS 183.745. [1989 c.764 §§3,6; 1991 c.734 §20]

Note: See note under 431.840.

431.853 Random inspections of sellers of tobacco products; site; frequency; rules. (1) The Department of Human Services shall:

(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of Oregon wholesalers and retailers of tobacco products to insure compliance with Oregon laws designed to discourage the use of tobacco by minors including ORS 163.575, 163.580, 167.400, 167.402 and 431.840; and

(b) Submit a report describing:

(A) The activities carried out to enforce the laws listed in paragraph (a) of this subsection during the previous fiscal year;

(B) The extent of success achieved in reducing the availability of tobacco products to minors; and

(C) The strategies to be utilized for enforcing the laws listed in paragraph (a) of

this subsection during the year following the report.

(2) The Department of Human Services shall adopt rules concerning random inspections of places that sell tobacco products consistent with section 1921, Public Law 102-321, 1992. The rules shall provide that inspections may take place:

(a) Only in areas open to the public;

(b) Only during hours that tobacco products are sold or distributed; and

(c) No more frequently than once a month in any single establishment unless a compliance problem exists or is suspected. [1993 c.788 §1]

Note: See note under 431.840.

ALZHEIMER'S DISEASE

431.855 Alzheimer's Disease Research Fund. (1) There is established as a separate and distinct fund in the State Treasury an Alzheimer's Disease Research Fund. The Alzheimer's Disease Research Fund shall consist of:

(a) An amount credited to the fund under ORS 305.749, which shall be transferred by the Department of Revenue to the fund.

(b) Gifts, grants and donations, in money or otherwise, for use as described in subsection (2) of this section, which the State Treasurer may solicit and accept from private and public sources and shall cause to be deposited and credited to the Alzheimer's Disease Research Fund.

(c) Interest or other earnings on the amounts described in paragraphs (a) and (b) of this subsection which shall inure to the benefit of the Alzheimer's Disease Research Fund.

(2) Moneys contained in the Alzheimer's Disease Research Fund are continuously appropriated for the purpose of grants to the Alzheimer's Disease Center of Oregon, a cooperative venture between Oregon Health and Science University, Good Samaritan Hospital and Medical Center, the United States Department of Veterans Affairs and the Alzheimer's Disease and Related Disorders Association to carry out research on Alzheimer's disease and related disorders. [1987 c.902 §3; 1989 c.987 §23; 1991 c.67 §113]

Note: 431.855 and 431.860 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.860 Control of fund. Oregon Health and Science University shall have access to and control of the moneys held in the Alzheimer's Disease Research Fund established under ORS 431.855 but shall use such moneys only for the purposes specified in ORS 431.855 (2). [1989 c.987 §24]

Note: See note under 431.855.

TOXIC HOUSEHOLD PRODUCTS

431.870 Definitions for ORS 431.870 to 431.915. As used in ORS 431.870 to 431.915:

(1) "Household product" means any product intended for use under any of the following circumstances:

(a) In, on or around any structure, vehicle, article, surface or area associated with the household, including but not limited to nonagricultural outbuildings, noncommercial greenhouses, pleasure boats and recreational vehicles.

(b) In or around any preschool or child care facility.

(2) "Task force" means the Poison Prevention Task Force.

(3) "Toxic household product" means any product listed in ORS 431.885 that is customarily produced or distributed for sale for use in or about the household or is customarily stored by individuals in or about the household. [1991 c.915 §2; 1995 c.278 §54]

Note: 431.870 to 431.915 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.875 Legislative findings. The Legislative Assembly finds that:

(1) Most poisonings involve children under six years of age.

(2) The federal Poison Prevention Packaging Act of 1970 requires child-resistant safety packaging for various toxic household products in order to inhibit a child's ability to access poisonous substances. This effort, in conjunction with the formation of poison control centers, education efforts, availability of ipecac syrup for home treatment and labeling requirements, has significantly reduced the number of poisonings. However, most poisonings occur while the product is in use, rather than when stored, and many toxic household products are exempt from the child-resistant safety packaging laws.

(3) The National Safety Council, the American Medical Association and the American Association of Poison Control Centers have noted that the addition of nontoxic aversive agents to toxic household products may make these products so unpalatable that many children reject the products upon, or shortly after, tasting them. These organizations have urged manufacturers of toxic household products to add nontoxic aversive agents to their products in addition to child resistant closures in order

that ingestion of these products may be reduced, thus providing another means to prevent or mitigate severe poisonings.

(4) Aversive agents are currently being used in various household products to mitigate child poisonings. [1991 c.915 §1]

Note: See note under 431.870.

431.880 Aversive agent required. Any toxic household product that is listed in ORS 431.885 and is manufactured on or after July 1, 1993, and sold in this state, shall include an aversive agent approved by the Poison Prevention Task Force within the product in a concentration so as to render the product unpalatable. [1991 c.915 §3]

Note: See note under 431.870.

431.885 Toxic household products required to comply with aversive agent requirement; exemptions. (1) The following toxic household products must comply with ORS 431.880:

(a) Antifreeze containing 10 percent or more ethylene glycol by weight.

(b) Windshield washer fluid containing four percent or more methyl alcohol (methanol) by weight.

(2) The following toxic household products are exempted from the requirements of ORS 431.880:

(a) Pesticide products subject to registration under ORS chapter 634 or under the Federal Insecticide, Fungicide, Rodenticide Act.

(b) Any drug as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C.§301 et seq.) or in ORS 689.005.

(c) Products exempted under the provisions of section 7, chapter 915, Oregon Laws 1991. [1991 c.915 §4]

Note: See note under 431.870.

431.887 Limitation on liability; application. (1) A manufacturer, distributor or seller of a toxic household product that is required to contain an aversive agent under the provisions of ORS 431.880 is not liable to any person for any personal injury, death or property damage that results from the inclusion of the aversive agent in the toxic household product.

(2) The limitation on liability provided by this section is only applicable if the aversive agent is included in the toxic household product in concentrations approved by the Poison Prevention Task Force.

(3) The limitation on liability provided by this section does not apply if the personal injury, death or property damage results from willful and wanton misconduct by the manufacturer, distributor or seller of the toxic household product. [1995 c.76 §2]

Note: See note under 431.870.

431.890 Poison Prevention Task Force; members; meetings; duties. (1) The Poison Prevention Task Force is created in the Poison Center of the Oregon Health and Science University and consists of five members as follows:

(a) The Medical Director of the Oregon Poison Center or designee, who shall serve as chairperson.

(b) The Director of Human Services or a designee.

(c) A pediatrician licensed under ORS chapter 677, appointed by the Governor.

(d) A chemist from an academic institution, appointed by the Governor.

(e) A representative of a manufacturer of toxic household products, appointed by the Governor.

(2) Each member shall serve without compensation.

(3) The task force shall meet as considered necessary by the chairperson or on the call of three members of the task force.

(4) The task force shall meet for the purposes of reviewing, granting or denying requests for exemptions from and extensions of the requirements of ORS 431.870 to 431.915.

(5) The task force shall obtain and evaluate statewide poisoning incidence and severity data over a period of every two years for the purpose of making recommendations for the addition or deletion of products to ORS 431.885. [1991 c.915 §5]

Note: See note under 431.870.

431.895 Efficacy and toxicity data available to task force; use; confidentiality of data. (1) The Poison Prevention Task Force may request efficacy and toxicity data, or other pertinent data it considers necessary, from the manufacturer of any toxic household product. The information shall be made available by the manufacturer to the task force upon request and shall remain confidential, if so requested.

(2) The task force may request data from and utilize the technical expertise of other state agencies or health care providers, or both, to evaluate the incidence and severity of poisoning, drug overdose and toxic exposure. [1991 c.915 §8]

Note: See note under 431.870.

431.900 Reports to legislature. The Poison Prevention Task Force shall report to the Legislative Assembly as necessary with recommendations for the addition or deletion of products from the list set forth in ORS 431.885. The task force shall report to the Legislative Assembly any additional recommended measures which shall include reduc-

ing the incidence and severity of poisoning, poison prevention education activities and child resistant closure effectiveness. [1991 c.915 §9]

Note: See note under 431.870.

431.905 Enforcement by civil action; injunction; damages; attorney fees. (1) Any person may bring a civil action in a court of competent jurisdiction to enforce the requirements of ORS 431.870 to 431.915. The court may grant injunctive relief in any action brought pursuant to this section.

(2) Punitive damages may also be awarded in any action brought pursuant to this section.

(3) The court may award reasonable attorney fees to the prevailing party in an action under this section. [1991 c.915 §11; 1995 c.618 §70]

Note: See note under 431.870.

431.910 Prohibited conduct. (1) It is unlawful for any person to distribute or sell a toxic household product or cause a toxic household product to be distributed or sold in this state if it does not meet the requirements of ORS 431.870 to 431.915.

(2) The prohibition contained in subsection (1) of this section does not apply to a person engaged in the business of wholesale or retail distribution of a toxic household product, unless the person is engaged in the manufacture of the product, or has knowledge that a toxic household product which the person is distributing or selling is in violation of ORS 431.870 to 431.915.

(3) A distributor of a house brand shall not be considered a manufacturer for purposes of filing an application for an extension pursuant to section 6, chapter 915, Oregon Laws 1991, or for an exemption pursuant to section 7, chapter 915, Oregon Laws 1991. Nothing in this subsection is intended to exempt a distributor of a house brand from any other provisions of ORS 431.870 to 431.915. [1991 c.915 §10]

Note: See note under 431.870.

431.915 Civil penalty for violation of ORS 431.870 to 431.915. (1) Any person who violates any provision of ORS 431.870 to 431.915 shall be liable for a civil penalty not to exceed $5,000 for each day of violation, which shall be assessed and recovered in a civil action brought by the Department of Human Services.

(2) All civil penalties collected pursuant to subsection (1) of this section shall be deposited in the General Fund. [1991 c.915 §§12,13]

Note: See note under 431.870.

LEAD POISONING PREVENTION

431.920 Training provider accreditation; lead poisoning prevention programs; fees. The Department of Human Services shall:

(1) Develop accreditation programs for training providers;

(2) Prescribe the requirements for and the manner of testing the competency of license applicants for the protection of the public and as required by federal law;

(3) Prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the agency may refuse to issue or renew or may suspend or revoke a certification;

(4) Develop and conduct programs to screen blood lead levels, to identify hazards and to educate the public, including parents, residential dwelling owners and child care facility operators, about the dangers of lead-based paint hazards and of appropriate precautions that should be taken to reduce the possibility of childhood lead poisoning; and

(5) Impose fees to the extent necessary to pay the costs of the following:

(a) Certification of training curriculums, up to $1,500;

(b) Annual renewal of training providers and curriculums, up to $500;

(c) Certification of trainers, up to $500;

(d) Annual renewal of trainer's certification, up to $250; and

(e) Certification test, up to $85. [1995 c.795 §6]

Note: 431.920 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

REGULATION OF TANNING FACILITIES

431.925 Definitions for ORS 431.925 to 431.955. As used in ORS 431.925 to 431.955, unless the context requires otherwise:

(1) "Phototherapy device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease or illness.

(2) "Tanning device" means any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers used for tanning of the skin including, but not limited to, a sunlamp, tanning booth or tanning bed. "Tanning device" also means any accompanying equipment including, but not limited to, protective eye wear, timers and handrails.

(3) "Tanning facility" means any location, place, area, structure or business that provides persons access to any tanning device. [1991 c.619 §1]

Note: 431.925 to 431.955 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.930 Purpose of ORS 431.925 to 431.955. It is the purpose of ORS 431.925 to 431.955 to regulate tanning facilities to minimize the risks associated with suntanning with artificial ultraviolet light. These risks include, but may not be limited to:

(1) Sunburn;

(2) Premature aging of the skin;

(3) Skin cancer;

(4) Retinal damage;

(5) Formation of cataracts;

(6) Suppression of the immune system; and

(7) Damage to the vascular system. [1991 c.619 §2]

Note: See note under 431.925.

431.935 Tanning device to comply with federal requirements; exception for certain phototherapy devices. (1) Any tanning device used by a tanning facility shall comply with all applicable federal laws and regulations.

(2) ORS 431.925 to 431.955 does not apply to a phototherapy device used by or under the direct supervision of a physician licensed under ORS chapter 677. [1991 c.619 §§3,4]

Note: See note under 431.925.

431.940 Standards and regulation of tanning devices; rules; fee; inspection. (1) The Department of Human Services shall adopt by rule standards and a system of registration for tanning devices. Any entity doing business in this state as a tanning facility shall register the tanning devices with the department in a manner prescribed by rule.

(2) The registration shall include payment of an annual registration fee of, not to exceed per tanning device, $76, prescribed by rule in an amount sufficient to cover the costs of administering the regulatory program.

(3) The department may conduct inspections of tanning facilities to insure compliance with ORS 431.925 to 431.955. [1991 c.619 §5; 1993 c.728 §2]

Note: See note under 431.925.

431.945 Written warning statement and sign; content. (1) A tanning facility shall give each customer a written statement warning that:

(a) Not wearing the protective eye wear provided to each customer by the tanning facility may cause damage to the eyes.

(b) Overexposure to the tanning process causes burns.

(c) Repeated exposure to the tanning process may cause skin cancer or premature aging of the skin, or both.

(d) Abnormal skin sensitivity or burning may result from the tanning process if the customer is also consuming or using certain:

(A) Foods.

(B) Cosmetics.

(C) Medications such as tranquilizers, antibiotics, diuretics, high blood pressure medication, antineoplastics or birth control pills.

(e) Any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device.

(2) In addition to giving customers the written statement required by subsection (1) of this section, the tanning facility shall post a warning sign in any area where a tanning device is used. The Department of Human Services shall adopt by rule the language for the warning sign. [1991 c.619 §§6,7]

Note: See note under 431.925.

431.950 Civil penalty for violation of ORS 431.925 to 431.955. The Department of Human Services may impose a civil penalty in an amount not to exceed $500 for a violation of ORS 431.925 to 431.955 or rules of the department adopted pursuant to ORS 431.925 to 431.955. Civil penalties under this section shall be imposed in the manner provided by ORS 183.745. [1991 c.619 §§9,13]

Note: See note under 431.925.

431.955 Disposition of receipts. Except as otherwise provided by law, all fees and other moneys received by the Department of Human Services pursuant to ORS 431.925 to 431.955 shall be paid into the State Treasury and placed to the credit of the Public Health Account and are continuously appropriated to the department for the purposes of carrying out the provisions of ORS 431.925 to 431.955. If moneys received under ORS 431.925 to 431.955 are in excess of moneys required to administer the program authorized by ORS 431.925 to 431.955, the moneys may be used by the department to meet expenses of other programs administered by the department if an appropriate expenditure increase is approved by the Emergency Board. [1991 c.619 §11]

Note: See note under 431.925.

PENALTIES

431.990 Penalties. Unless otherwise specifically provided by any other statute, failure to obey any rules relating to public health of the Department of Human Services or failure to obey any lawful written order relating to public health issued by the Director of Human Services or any district or county public health administrator is a Class A misdemeanor. [Amended by 1959 c.629 §46; 1961 c.610 §15; 1973 c.408 §34; 1973 c.829 §33; 1977 c.582 §32; 2001 c.900 §153]