Chapter 443

2003 EDITION

Home Health Agencies; Residential Facilities; Hospice Programs

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HOME HEALTH AGENCIES

443.005 Definitions for ORS 443.005 to 443.095. As used in ORS 443.005 to 443.095:

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

(2) "Home health agency" means a public or private agency providing coordinated home health services on a home visiting basis. "Home health agency" does not include:

(a) Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a recognized church or religious denomination.

(b) Those home health services offered by county health departments outside, and in addition to, programs formally designated and funded as home health agencies.

(3) "Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such agency, on a visiting basis, in a place of temporary or permanent residence used as the individual's home for the purpose of maintaining that individual at home. [1977 c.738 §1; 1979 c.209 §1; 1981 c.415 §1; 2003 c.57 §1]

443.010 [Amended by 1963 c.164 §1; repealed by 1969 c.641 §19]

443.015 License required; renewal, transferability of license. No public or private agency or person shall establish, conduct or maintain a home health agency or organization providing home health services for compensation, or hold itself out to the public as a home health agency or organization, without first obtaining a license therefor from the Department of Human Services. The license shall be renewable annually and is not transferable. [1977 c.738 §2; 2003 c.14 §259]

443.020 [Amended by 1957 c.697 §4; 1961 c.316 §10; 1967 c.89 §6; repealed by 1969 c.641 §19]

443.025 Hospitals exempt from certain requirements if standards are met. Any hospital licensed under ORS 441.015 may provide home health services without paying a separate licensing fee and without maintaining a separate governing body and administrative staff so long as the services provided meet the requirements of ORS 443.005 to 443.095. [1977 c.738 §7; 1995 c.449 §3]

443.030 [Repealed by 1969 c.641 §19]

443.035 License fees; renewal date; disposition of funds. (1) A license may be granted, or may be renewed annually, for the calendar year beginning on or after January 1, 1996, upon payment of a fee as follows:

(a) For a new home health agency:

(A) $1,000; and

(B) An additional $1,000 for each subunit of a parent home health agency.

(b) For renewal of a license:

(A) $600; and

(B) An additional $600 for each subunit of a parent home health agency.

(c) For a change of ownership at a time other than the annual renewal date:

(A) $500; and

(B) An additional $500 for each subunit of a parent home health agency.

(2) Notwithstanding subsection (1)(c) of this section, the fee for a change in ownership shall be $100 if a change in ownership does not involve:

(a) The majority owner or partner; or

(b) The administrator operating the agency.

(3) All fees received pursuant to subsection (1) of this section shall be paid over to the State Treasurer and credited to the Public Health Account. Such moneys are appropriated continuously to the Department of Human Services for the administration of ORS 443.005 to 443.095. [1977 c.738 §8; 1995 c.449 §4]

443.040 [Repealed by 1969 c.641 §19]

443.045 Denial, suspension and revocation of licenses. (1) The Department of Human Services may deny, suspend or revoke the license of any home health agency for failure to comply with ORS 443.005 to 443.095 or with the rules of the department as authorized by ORS 443.085.

(2) License denials, suspensions and revocations, adoption of rules and judicial review thereof shall be in accordance with ORS chapter 183. [1977 c.738 §9]

443.050 [Repealed by 1969 c.641 §19]

443.055 Governing body of home health agencies. A home health agency shall have an organized governing body, or, if a subdivision of a public or private agency or a multifunction organization, a clearly defined local body having responsibility for the conduct of the home health agency. Where the governing body is functionally remote from the operation of the home health agency, the Department of Human Services may approve the designation of an appropriate part of the organization as the governing body. [1977 c.738 §3]

443.060 [Amended by 1963 c.164 §2; repealed by 1969 c.641 §19]

443.065 General requirements for home health agencies. The home health agency shall:

(1) Be primarily engaged in providing skilled nursing services and at least one

other service delineated in ORS 443.075 (2) and (3);

(2) Have policies established by professional personnel associated with the agency or organization, including one or more physicians and one or more registered nurses, at least two of whom are neither owners nor employees of the agency, and two consumers, to govern the services that it provides;

(3) Require supervision of services that it provides under subsection (1) of this section by a physician, nurse practitioner or registered nurse, preferably a public health nurse;

(4) Maintain clinical, financial and professional records on all patients; and

(5) Have an overall plan and budget in effect. [1977 c.738 §4; 1981 c.415 §2; 2001 c.346 §1]

443.075 Services and supplies prescribed by physician or nurse practitioner. The following services and supplies may be prescribed by a physician or a nurse practitioner in accordance with a plan of treatment which must be established and periodically reviewed by the physician or nurse practitioner:

(1) Home nursing care provided by or under the supervision of a registered nurse;

(2) Physical, occupational or speech therapy, medical social services or other therapeutic services;

(3) Home health aide services; and

(4) Medical supplies, other than drugs and biologicals, and the use of medical appliances. [1977 c.738 §5; 1981 c.415 §3; 2001 c.346 §2]

443.085 Rules. The Department of Human Services shall adopt rules relating to the home health agencies licensed under ORS 443.005 to 443.095 and 443.991 (1), governing:

(1) The qualifications of professional and ancillary personnel in order to adequately furnish home health services;

(2) Standards for the organization and quality of patient care;

(3) Procedures for maintaining records; and

(4) Provision for contractual arrangements for professional and ancillary health services. [1977 c.738 §6]

443.090 Exemption from in-home care agency licensing requirements. Notwithstanding ORS 443.305 to 443.350, a home health agency licensed under ORS 443.015 that provides personal care services that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services, is not required to be licensed as an in-home care agency under ORS 443.315. [2003 c.57 §3]

443.095 Applicability of laws to domestic service. No provision of ORS 443.005 to 443.095 and 443.991 (1) shall be construed to prevent repair or domestic services by any person. [1977 c.738 §10]

DOMICILIARY CARE FACILITIES

443.205 Definitions for ORS 443.215 and 443.225. As used in ORS 443.215 and 443.225, "domiciliary care facilities" means facilities providing residential care to adults, including adult foster care homes, group care facilities or residential treatment, training or care facilities, established, contracted for or operated by the Department of Human Services. [1977 c.779 §3; formerly 184.870; 1987 c.320 §234; 2001 c.900 §181]

443.210 [1953 c.659 §1; 1965 c.230 §1; 1973 c.285 §8; repealed by 1977 c.717 §23]

443.215 Policy. (1) The Legislative Assembly recognizes the importance of providing a high quality of domiciliary care facilities throughout the State of Oregon.

(2) It is the intent of ORS 443.205 to 443.225 to distribute domiciliary care facility capacity on the basis of population and the regional origin of institutionalized persons. [1977 c.779 §1; formerly 184.875]

443.220 [1953 c.659 §2; 1971 c.650 §21; 1973 c.285 §9; repealed by 1977 c.717 §23]

443.225 Location and capacity of domiciliary care facilities. (1) Except as otherwise provided by subsections (3) and (4) of this section, the capacity of all domiciliary care facilities must be located throughout the state based on the relationship of (a) the population of the county in which the additional capacity is proposed to be located to (b) the number of persons originating from the county determined to be in need of domiciliary care by the Department of Human Services. However, nothing in this subsection is intended to prevent the placement of a person who is or was not a resident of the county in a domiciliary care facility in the county.

(2) Where a county is too sparsely populated to produce a meaningful ratio of county population to population in need, or a county is lacking necessary support services, the population of two or more counties may be combined. The area of the combined counties may be considered a county for purposes of subsection (1) of this section.

(3) The computation required by subsection (1) of this section shall not require reduction in any domiciliary care facility capacity existing on October 4, 1977.

(4) Subject to the appropriate licensing requirements, the governing body of a county may authorize a domiciliary care facility located in the county to exceed the capacity

limit imposed by subsection (1) of this section upon:

(a) Request of an individual or organization operating or proposing to operate a domiciliary care facility;

(b) Consultation with an advisory committee appointed by the governing body and consisting of persons who are particularly interested in the type of domiciliary care facility contemplated; and

(c) Finding of good cause following notice and public hearing. [1977 c.779 §2; 1979 c.235 §1; formerly 184.880]

443.230 [1953 c.659 §3; 1973 c.285 §10; repealed by 1977 c.717 §23]

443.240 [1953 c.659 §§4,5; 1973 c.285 §11; repealed by 1977 c.717 §23]

443.250 [1953 c.659 §6; 1961 c.316 §11; 1967 c.89 §7; 1973 c.285 §12; repealed by 1977 c.717 §23]

443.260 [1953 c.659 §7; 1961 c.316 §12; 1967 c.89 §8; 1973 c.285 §13; repealed by 1977 c.717 §23]

443.270 [1953 c.659 §8; repealed by 1973 c.285 §19]

443.280 [1953 c.659 §9; 1973 c.285 §14; repealed by 1977 c.717 §23]

443.290 [1953 c.659 §10; 1973 c.285 §15; repealed by 1977 c.717 §23]

443.300 [1953 c.659 §11; 1973 c.285 §16; repealed by 1977 c.717 §23]

IN-HOME CARE AGENCIES

443.305 Definitions for ORS 443.305 to 443.350. As used in ORS 443.305 to 443.350:

(1) "In-home care agency" means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency as defined in ORS 443.005.

(2) "In-home care services" means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but does not include curative or rehabilitative services.

(3) "Subunit" means an in-home care agency that provides services for a parent agency in a geographic area different from that of the parent agency and generally exceeding one hour of travel time from the location of the parent agency. [1999 c.1034 §1]

Note: 443.305 to 443.350 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 443 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

443.310 [1953 c.659 §12; 1973 c.285 §17; repealed by 1977 c.717 §23]

443.315 License required; application; fees. (1) A person shall not operate or maintain an in-home care agency or purport to operate or maintain an in-home care agency without obtaining a license from the Department of Human Services.

(2) The department shall establish requirements and qualifications for licensure under this section by rule. The department shall issue a license to an applicant that has the necessary qualifications and meets all requirements established by rule, including the payment of required fees.

(3) Application for a license required under subsection (1) of this section shall be made in the form and manner required by the department by rule and shall be accompanied by any required fees.

(4) The department shall adopt a schedule of required fees by rule. The fee for initial licensure shall not exceed $500 per subunit of an in-home care agency. The fees established under this subsection are subject to the prior approval of the Oregon Department of Administrative Services and, if their adoption occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The fees shall not exceed the cost of administering the provisions of ORS 443.305 to 443.350 as authorized by the Legislative Assembly.

(5) A license issued under this section is valid for one year. A license may be renewed by payment of the required renewal fee established by rule, and by demonstration of compliance with requirements for renewal established by rule.

(6) A license issued under this section is not transferable. [1999 c.1034 §2]

Note: See note under 443.305.

443.320 [1953 c.659 §13; repealed by 1971 c.734 §21]

443.325 Grounds for denial, suspension or revocation of license. (1) The Department of Human Services may deny, suspend or revoke the license of any in-home care agency licensed under ORS 443.315 for failure to comply with ORS 443.305 to 443.350 or with rules adopted thereunder.

(2) Action under this section shall be taken in accordance with ORS chapter 183. [1999 c.1034 §3]

Note: See note under 443.305.

443.330 [1953 c.659 §15; 1973 c.285 §18; repealed by 1977 c.717 §23]

443.335 [1971 c.734 §60; repealed by 1977 c.717 §23]

443.340 Rules. The Department of Human Services shall adopt administrative rules necessary for the implementation and administration of ORS 443.305 to 443.350. These rules shall include, but are not limited to, a requirement that an in-home care agency must conduct criminal background checks on all individuals employed by or contracting with the agency as in-home caregivers. [1999 c.1034 §4; 2001 c.900 §182]

Note: See note under 443.305.

443.345 Disposition of fees. All fees received pursuant to ORS 443.315 shall be deposited in the State Treasury and credited to an account designated by the Department of Human Services. Such moneys are continuously appropriated to the department for the administration of ORS 443.305 to 443.350. [1999 c.1034 §5]

Note: See note under 443.305.

443.350 Applicability. The provisions of ORS 443.305 to 443.350 do not apply to organizations licensed, registered or certified under ORS 101.030, 410.495, 443.410, 443.485, 443.725, 443.860 or 443.886. [1999 c.1034 §6]

Note: See note under 443.305.

RESIDENTIAL FACILITIES AND HOMES

443.400 Definitions for ORS 443.400 to 443.455. As used in ORS 443.400 to 443.455 and 443.991 (2), unless the context requires otherwise:

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

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

(3) "Resident" means any individual residing in a facility who receives residential care, treatment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be a resident if he or she is related by blood or marriage within the fourth degree as determined by civil law to the person licensed to operate or maintain the facility.

(4) "Residential care" means services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(5) "Residential care facility" means a facility that provides, for six or more physically disabled or socially dependent individuals, residential care in one or more buildings on contiguous properties.

(6) "Residential facility" means a residential care facility, residential training facility, residential treatment facility, residential training home or residential treatment home.

(7) "Residential training facility" means a facility that provides, for six or more mentally retarded or other developmentally disabled individuals, residential care and training in one or more buildings on contiguous properties.

(8) "Residential training home" means a facility that provides, for five or fewer mentally retarded or other developmentally disabled individuals, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the department.

(9) "Residential treatment facility" means a facility that provides, for six or more mentally, emotionally or behaviorally disturbed individuals or alcohol or drug dependent persons, residential care and treatment in one or more buildings on contiguous properties.

(10) "Residential treatment home" means a facility that provides for five or fewer mentally, emotionally or behaviorally disturbed individuals or alcohol or drug dependent persons, residential care and treatment in one or more buildings on contiguous properties.

(11) "Training" means the systematic, planned maintenance, development or enhancement of self-care skills, social skills or independent living skills, or the planned sequence of systematic interactions, activities or structured learning situations designed to meet each resident's specified needs in the areas of physical, social, emotional and intellectual growth.

(12) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem. [1977 c.717 §1; 1987 c.548 §1; 1989 c.224 §95; 1989 c.488 §1; 1991 c.801 §1; 2001 c.900 §183]

443.405 Exclusions from definition of "residential facility." For purposes of ORS 443.400 to 443.455 and 443.991 (2), "residential facility" does not include:

(1) A residential school;

(2)(a) State or local correctional facilities, other than local facilities for persons enrolled in work release programs maintained under ORS 144.460;

(b) Youth correction facilities as defined in ORS 420.005;

(c) Youth care centers operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885; and

(d) Juvenile detention facilities as defined in ORS 419A.004;

(3) A nursing home;

(4) A hospital;

(5) A place primarily engaged in recreational activities;

(6) A foster home; or

(7) A place providing care and treatment on less than a 24-hour basis. [1977 c.717 §2; 1983 c.510 §18; 1993 c.33 §350; 1999 c.316 §2]

443.410 License required. A license issued by the Department of Human Services is required in order to operate or maintain any residential facility for persons who are developmentally disabled, physically disabled or socially dependent, psychiatrically disabled or alcohol or drug dependent. In the case of a combination of residents, the category of licensure shall be determined by the Director of Human Services. [1977 c.717 §3; 1983 c.510 §19; 1989 c.224 §96; 1989 c.488 §2; 1991 c.801 §2]

443.415 License applications; fee; investigations; grounds for issuance and denial of license. (1) Applications for licensure to maintain and operate a residential facility shall be made to the Department of Human Services on forms provided for that purpose by the department. Each application shall be accompanied by a fee of $60 for facilities defined in ORS 443.400 (5), (7) and (9) and a fee of $30 for homes defined in ORS 443.400 (8) and (10). No fee is required of any governmentally operated residential facility.

(2) Upon receipt of an application and fee, the department shall conduct an investigation. The department shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.400 to 443.455 and 443.991 (2) and the rules of the director. Licensure may be denied when a residential facility is not in compliance with ORS 443.400 to 443.455 and 443.991 (2) or the rules of the Director of Human Services. Licensure shall be denied if the State Fire Marshal or other authority has given notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220. [1977 c.717 §8; 1979 c.696 §16; 1987 c.548 §2; 2001 c.900 §184]

Note: Sections 1 and 2, chapter 981, Oregon Laws 2001, provide:

Sec. 1. (1) Notwithstanding ORS 443.415, the Department of Human Services may issue a license only to an applicant for operation of a residential care facility as defined in ORS 443.400 who is in compliance with ORS 443.400 to 443.455 and the rules of the Director of Human Services if:

(a) The type of residential care facility for which a license is sought is located in a service area that is underserved by facilities of that type;

(b) The residential care facility is relocating within the service area and the applicant is seeking an increase in the number of living units or residents in the facility as specified in subsection (2) of this section;

(c) The schematic plans or construction drawings for a new residential care facility were submitted to the department before August 16, 2001;

(d) There is a change of ownership or management of the residential care facility and the applicant is seeking an increase in the number of living units or residents in the facility as specified in subsection (2) of this section; or

(e) The residential care facility is applying for a license renewal under ORS 443.425 and the applicant is seeking an increase in the number of living units or residents in the facility as specified in subsection (2) of this section.

(2) An applicant may seek an increase in the number of residents to be maintained in the residential care facility:

(a) That is not greater than 10 percent of the maximum number of residents stated on the facility's license at the time of application; or

(b) Of 10 residents.

(3) In calculating 10 percent of the maximum number of residents, the department shall round up to the nearest whole number. [2001 c.981 §1; 2003 c.308 §1]

Sec. 2. Section 1, chapter 981, Oregon Laws 2001, is repealed on June 30, 2005. [2001 c.981 §2; 2003 c.308 §2]

443.420 Qualifications for license. (1) A person applying for a license under ORS 443.415 must, in the judgment of the Director of Human Services, be a person:

(a) Who demonstrates an understanding and acceptance of the rules governing residential facilities;

(b) Mentally and physically capable of caring for such residents; and

(c) Who employs or utilizes only individuals whose presence does not jeopardize the health, safety or welfare of residents.

(2) A residential facility shall not be operated or maintained in combination with a nursing home or hospital unless licensed, maintained and operated as a separate and distinct part.

(3) All physical residential facilities used for residents shall meet applicable requirements of the State Fire Marshal.

(4) Prior to licensure, a residential facility must be in substantial compliance with applicable state and local laws, rules, codes, ordinances and permit requirements.

(5) Prior to licensure, a residential facility that proposes to house persons under the age of 21 years shall submit written proof of compliance with ORS 336.575 to the Department of Human Services. [1977 c.717 §4; 1985 c.264 §3]

443.422 Siting of licensed residential facilities. (1) To prevent the perpetuation of segregated housing patterns, the Department of Human Services shall determine the location and type of licensed residential facilities and the location of facilities subject to the provisions of ORS 169.690.

(2) Before a license is issued for a residential facility as defined in ORS 443.400, the issuing agency shall determine the number and type of any other licensed residential facilities and the number and type of facilities subject to the provisions of ORS 169.690 within a 1,200 foot radius.

(3) None of the data collected under this section shall be used in a manner that violates the Fair Housing Amendments Act of 1988. [1989 c.564 §11]

Note: 443.422 was added to and made a part of ORS chapter 443 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

443.425 License term; contents; renewal; fee. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless sooner revoked. Each license shall state the name of the person operating the residential facility; the name of the person who owns the facility; the address of the premises to which the license applies and the maximum number of residents to be maintained in such residential facility at any time whether the residential facility is licensed as a residential training facility, a residential treatment facility, a residential care facility; a residential training home or residential treatment home and such other information as the Department of Human Services considers necessary.

(2) A license is renewable upon submission of an application to the department and payment of a fee of $60 for facilities licensed under ORS 443.400 (5), (7) and (9) and a fee of $30 for homes licensed under ORS 443.400 (8) and (10). No fee shall be required of a governmentally operated residential facility. Filing of an application for renewal before the date of expiration of a license extends the effective date of expiration of the license until the department has acted upon such application. The department shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules, or if the State Fire Marshal or the authorized representative thereof has given notice of noncompliance of facilities under ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220. [1977 c.717 §9; 1983 c.47 §1; 1983 c.740 §162; 1987 c.548 §3]

443.430 Transferability of license; disposition of license fees. (1) No license under ORS 443.415 is transferable or applicable to any location, residential facility or management other than that indicated on the application for licensure.

(2) All moneys collected under ORS 443.400 to 443.455 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Services in the administration of ORS 443.400 to 443.455. [1977 c.717 §10; 1983 c.47 §2]

443.435 Inspection of facilities. The Director of Human Services or authorized representative shall periodically visit and inspect every residential facility to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and 443.991 (2) and the rules of the director, and to consult with and advise management concerning methods of care, treatment, training, records, housing and equipment. Employees of the Department of Human Services and the State Fire Marshal or authorized representative on request shall be permitted access to the premises and records of individuals in a residential facility pertinent to fire safety. [1977 c.717 §11]

443.437 Choice of prescription and nonprescription drugs and supplies. (1) A resident in a residential facility must have a choice:

(a) From among prescription drug delivery systems so long as the system selected:

(A) Provides for timely delivery of drugs;

(B) Provides adequate protection to prevent tampering with drugs;

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy;

(b) From among suppliers of nonprescription medication but no facility is required to accept any opened container of such medication;

(c) From among suppliers of nonprescription sickroom supplies so long as any items supplied can be maintained in a clean manner with equipment available at the facility; and

(d) For purposes of paragraphs (b) and (c) of this subsection, "supplier" includes an authorized representative of the patient who purchases nonprescription medication or nonprescription sickroom supplies at retail.

(2) If the established system of the facility, whether that system is provided by a facility pharmacy or a pharmacy under contract, provides patient profile information, the pharmacy chosen by the resident under subsection (1)(a) of this section must also provide that information for any resident it serves at the facility. [1983 c.328 §4]

443.440 Revocation and suspension of licenses; procedure. The Department of Human Services may revoke or suspend the license of any residential facility which is not operated in accordance with ORS 443.400 to 443.455 and 443.991 (2) or the rules adopted thereunder. Such revocation or suspension shall be taken in accordance with rules of the department and ORS chapter 183. However, in cases where an imminent

danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension. [1977 c.717 §12]

443.445 Persons admissible at facilities and homes; transfer of persons requiring certain treatment; operation of facilities by persons relying on spiritual means for healing. (1) No residential facility or home shall admit individuals who require continuous nursing care except as provided in subsection (3) of this section.

(2) Except as provided in subsection (3) of this section, if any resident of a residential facility or home requires nursing care for eight or more consecutive days or a physician or the designee of a physician or a registered nurse certifies that continued nursing care is required, the resident shall be transferred to an appropriate health care facility for as long as necessary.

(3) A resident of a residential facility or home who requires nursing care in addition to training, treatment or care needs, or any combination thereof, may be served by that facility or home with approval from the Department of Human Services and in accordance with the rules of the department and consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

(4) No residential facility or home shall admit individuals of categories other than those designated on its license without prior written consent of the department.

(5) In the case of residential facilities or homes supervised by and operated exclusively for persons who rely upon prayer or spiritual means for healing in accordance with the creed or tenets of a well-recognized church or religious denomination, no medical, psychological or rehabilitative procedures shall be required. [1977 c.717 §5; 1991 c.292 §2; 2001 c.900 §185]

443.450 Rules. (1) The Director of Human Services shall adopt rules governing:

(a) The physical properties of the residential facility;

(b) Storage, preparation and serving of food;

(c) Care, treatment or training to be provided;

(d) The number, experience and training of the staff; and

(e) Any other factors affecting the care, treatment or training provided.

(2) Distinct rules shall be adopted for homes of five or fewer residents, for facilities of six or more but fewer than 16 residents, and for facilities for 16 or more residents. The rules shall differentiate among categories of residents.

(3) For purposes of this section, "categories" refers to different populations of residents, differentiated by, but not limited to, age and need, as defined by rule. [1977 c.717 §6; 1991 c.801 §3]

443.452 Waiver procedure. (1) The director shall waive the requirements of ORS 443.410 for a residential care facility caring for physically disabled residents if:

(a) Each resident is over 16 years of age;

(b) No more than five physically disabled individuals reside in any one building of the facility; and

(c) The residential facility complies with the applicable requirements of the State Fire Marshal.

(2) As used in this section, "building" means any structure that does not share a common wall or roof with another structure. [1981 c.285 §§2,3; 1989 c.224 §97]

Note: 443.452 (1) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 443 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

443.455 Civil penalties. For purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 and 443.991 (2) are considered to be long-term care facilities, subject to ORS 441.705 to 441.745. However, the Director of Human Services shall exercise the powers conferred under ORS 441.705 to 441.745. The director shall by rule prescribe a schedule of penalties appropriate to residential facilities licensed under ORS 443.400 to 443.455 and 443.991 (2). [1977 c.717 §13; 1991 c.801 §4; 2001 c.900 §186]

443.460 Exemptions. (1) The director may exempt from the license, inspection and fee provisions of ORS 443.400 to 443.455 residential care facilities in those counties where there is a county agency which provides similar programs for licensing and inspection that the director finds are equal to or superior to the requirements of ORS 443.400 to 443.455.

(2) Pursuant to an exemption as provided in subsection (1) of this section, the director may provide funds and other resources to the county necessary to enable the county to perform the licensing and inspection functions. [1987 c.548 §4]

443.475 [1977 c.284 §2; repealed by 1983 c.47 §3]

REGISTERED RESIDENTIAL FACILITIES

443.480 Definitions for ORS 443.480 to 443.500. As used in ORS 443.480 to 443.500:

(1) "Elderly" means an individual who is 62 years of age or older.

(2) "Disabled" means an individual who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities. [1989 c.581 §5]

Note: 443.480 to 443.500 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 443 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

443.485 Registration required; fee; rules; civil penalty; grounds for suspension or revocation of registration. (1) Subject to ORS 443.490, any person who offers to the general public residential facilities and meals for compensation to two or more adults who are elderly or disabled, as defined in ORS 443.480, not related to the person by blood or marriage, and is not licensed or registered under any other law of this state or city or county ordinance or regulation shall register the person's name and address with the Department of Human Services. The registration fee is $20 annually. The department shall establish by rule reasonable and appropriate standards for the operation of facilities subject to ORS 443.480 to 443.500, consistent with their residential nature.

(2) The Department of Human Services shall provide evidence of the registration to the person. The evidence shall be posted in the residence.

(3) The Department of Human Services may impose a civil penalty not to exceed $200 for:

(a) Operating without registration as required under this section; or

(b) A violation of ORS 443.880 or 443.881.

(4) The department may suspend or revoke registration or deny the issuance of registration for violation of any statute, rule, ordinance or regulation relating to the safety of occupants of the residential facility. [1989 c.581 §1; 1991 c.413 §5]

Note: See note under 443.480.

443.490 Waiver of registration. Any county or city that requires registration or licensure in the manner described in ORS 443.485, whether or not a fee is required, may request a waiver of the requirements of ORS 443.485. If the Department of Human Services finds that the county or city registration or licensure requirement is substantially similar or superior, it may waive the requirements of ORS 443.485. [1989 c.581 §2]

Note: See note under 443.480.

443.495 Exemptions. Nothing in ORS 443.480 to 443.500 applies to:

(1) Any facility operated by an institution of higher education.

(2) Any private room and board facility approved by an institution of higher education which has as a resident a student or an employee of the institution.

(3) Any private or nonprofit retirement facility which does not fall under the generally understood definition of a "room and board facility," a "boarding house" or a "boarding hotel" and where a majority of the residents are retirees.

(4) Any privately arranged housing the occupants of which may not be related by blood or marriage. [1989 c.581 §3]

Note: See note under 443.480.

443.500 Investigation of registered facilities; access to facilities. (1) The Department of Human Services staff shall be permitted access to enter and investigate complaints of abuse in all facilities registered under ORS 443.480 to 443.500 for purposes of ascertaining compliance with applicable rules, statutes, ordinances and regulations. If the department has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, it may apply to the circuit court for a search warrant.

(2) Upon complaint of any person:

(a) The state or local fire inspectors shall be permitted access to enter and inspect facilities registered under ORS 443.480 to 443.500 regarding fire safety.

(b) The state or local health officers shall be permitted access to enter and inspect facilities registered under ORS 443.480 to 443.500 regarding health and sanitation. [1989 c.581 §4]

Note: See note under 443.480.

443.510 [1981 c.427 §1; 1989 c.224 §98; repealed by 1989 c.564 §12]

443.520 [1981 c.427 §2; 1989 c.224 §99; repealed by 1989 c.564 §12]

443.530 [1981 c.427 §3; repealed by 1989 c.564 §12]

443.540 [1981 c.427 §4; repealed by 1989 c.564 §12]

443.550 [1981 c.427 §5; repealed by 1989 c.564 §12]

443.580 [1983 c.293 §1; 1989 c.224 §100; repealed by 1989 c.564 §12]

443.590 [1983 c.293 §2; 1989 c.224 §101; repealed by 1989 c.564 §12]

443.600 [1983 c.293 §3; 1985 c.544 §1; repealed by 1989 c.564 §12]

443.610 [1987 c.351 §1; 1989 c.224 §102; repealed by 1989 c.564 §12]

443.620 [1987 c.351 §2; repealed by 1989 c.564 §12]

443.630 [1987 c.351 §3; repealed by 1989 c.564 §12]

443.640 [1987 c.351 §4; repealed by 1989 c.564 §12]

ADULT FOSTER HOMES

443.705 Definitions for ORS 443.705 to 443.825. As used in ORS 443.705 to 443.825:

(1) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

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

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

(4) "Licensed adult foster home" means a home which has been investigated and approved by the department. This includes an on-site inspection of the facility.

(5) "Provider" means any person operating an adult foster home and includes a resident manager. "Provider" does not include the owner or lessor of the building in which the adult foster home is located or the owner or lessor of the land on which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(6) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation.

(7) "Substitute caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the department in the absence of the provider or resident manager. [1983 c.629 §1; 1985 c.663 §1; 1987 c.430 §1; 1991 c.960 §1; 1995 c.180 §1; 1995 c.667 §8; 2001 c.900 §187]

443.715 Exclusions from definition of "adult foster home." For purposes of ORS 443.705 to 443.825, "adult foster home" does not include:

(1) Any house, institution, hotel, or other similar place that supplies board and room only, or room only, or board only, if no resident thereof requires any element of care.

(2) Any specialized living situation for physically disabled persons where the Department of Human Services provides payment for personal care services other than to an adult foster home provider.

(3) Any residential facility, as defined in ORS 443.400, licensed and funded by the department.

(4) Any residential treatment home, as defined in ORS 443.400, licensed and funded by the department. [1983 c.629 §2; 1985 c.663 §2; 1989 c.224 §103; 1991 c.801 §5; 2001 c.900 §188]

443.720 Findings of Legislative Assembly. (1) The Legislative Assembly finds that:

(a) Adult foster homes provide needed care and services to thousands of elderly and disabled Oregonians who might otherwise be institutionalized;

(b) The protection of the health, safety and well-being of the residents of adult foster homes is an important function of the Department of Human Services; and

(c) Consistent interpretation, application and enforcement of regulatory standards is necessary and desirable for the protection of adult foster home residents.

(2) It is legislative intent that:

(a) The department provide training and guidelines for employees assigned to licensing and enforcement to encourage consistency; and

(b) The department take vigorous action to ensure that inspections and investigations are carried out as required by law. [1995 c.667 §7]

443.725 License required; resident manager required; when other resident staff required. (1) Every provider of adult foster care shall be licensed with the Department of Human Services before opening or operating an adult foster home caring for adult residents.

(2) A provider must live in the home that is to be licensed or hire a resident manager to live in the home.

(3) There must be a provider, resident manager or substitute caregiver on duty 24 hours per day in an adult foster home under the jurisdiction of the Department of Human Services. [1983 c.629 §3; 1985 c.663 §3; 1991 c.960 §4; 1995 c.667 §9]

443.730 Information regarding substitute caregivers required; standards; educational requirements. (1) The provider shall furnish the names, addresses and telephone numbers of the substitute caregivers employed or used by the provider to the Department of Human Services upon the request of the department.

(2) The department shall require the provider to furnish information describing the planned operation of the adult foster home, including the use of substitute caregivers and other staff, as part of the license application.

(3) The provider shall not allow a substitute caregiver or other caregiver to provide care to a resident unless the following standards are met and documented:

(a) The department has completed a criminal records check for the State of Oregon and has completed or initiated a national criminal records check, if appropriate under

ORS 443.735 (3), for the person. The department shall adopt rules to provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

(b) The substitute caregiver has successfully completed the training required by the department.

(c) The caregiver is able to understand and communicate in oral and written English.

(d) The provider has oriented the caregiver to the residents in the adult foster home, their care needs and the physical characteristics of the home.

(e) The provider has trained the caregiver to meet the routine and emergency needs of the residents.

(4) The department shall establish educational requirements for substitute caregivers and other caregivers designed to impart the practical knowledge and skills necessary to maintain the health, safety and welfare of residents. The training shall include a test established by the department to be completed by the caregiver. The test shall be completed by the caregiver without the help of any other person. [1995 c.667 §18]

Note: 443.730 and 443.740 were added to and made a part of 443.705 to 443.825 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

443.735 Issuance of license; fee; standards; renewal; burden of proof. (1) Applications for license to maintain and operate an adult foster home shall be made on forms provided by the Department of Human Services. Each application shall be accompanied by a fee of $20 per bed requested for license.

(2) Upon receipt of an application and fee, the department shall conduct an investigation.

(3) The department shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the department;

(b) The department has completed an inspection of the adult foster home;

(c) The department has completed a criminal records check on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check shall be conducted in accordance with rules adopted under ORS 181.537;

(d) The department has checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678; and

(e) The applicant has demonstrated to the department the financial ability and resources necessary to operate the adult foster home. The department shall adopt rules as the department deems appropriate that establish the financial standards an applicant must meet to qualify for issuance of a license and that protect financial information from public disclosure. The demonstration of financial ability under this paragraph shall include, but need not be limited to, providing the department with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the department regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the department may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(4) The department shall not renew a license under this section unless:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the department;

(b) The department has completed an inspection of the adult foster home;

(c) The department has completed a criminal records check on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check under this paragraph shall be conducted in accordance with rules adopted under ORS 181.537; and

(d) The department has checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678.

(5)(a) In seeking an initial license and renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

(b) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the department to establish noncompliance with ORS 443.705 to 443.825 and the rules of the department.

(6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of the department, are substantially related to the qualifications, functions or duties of a provider, resident manager,

substitute caregiver or other household member of an adult foster home shall be prohibited from operating, working in or residing in an adult foster home.

(b) The department shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from the convictions and types of abuse that do not permanently prohibit the person from operating, working in or living in an adult foster home.

(c) A provider may not hire, retain in employment or allow to live in an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse.

(7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner revoked. Each license shall state the name of the resident manager of the adult foster home, the names of all providers who own the adult foster home, the address of the premises to which the license applies, the maximum number of residents and the classification of the home. If, during the period covered by the license, a resident manager changes, the provider must within 15 days request modification of the license. The request must be accompanied by a fee of $10.

(8) No license under ORS 443.725 is transferable or applicable to any location, persons operating the adult foster home or the person owning the adult foster home other than that indicated on the application for licensing.

(9) The department shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing licensed home or homes and has demonstrated the ability to provide care to the residents of those homes that is adequate and substantially free from abuse and neglect.

(10) All moneys collected under ORS 443.725 to 443.780 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Services.

(11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the department may issue a 60-day provisional license to a qualified person if the department determines that an emergency situation exists after being notified that the licensed provider of an adult foster home is no longer overseeing operation of the adult foster home. [1983 c.629 §4; 1985 c.663 §4; 1991 c.960 §5; 1995 c.180 §2; 1995 c.667 §10; 1999 c.205 §1; 2001 c.900 §189]

443.738 Educational standards for providers, managers and caregivers; rules; exception; duties of providers. (1) Except as provided in subsection (3) of this section, all providers, resident managers and substitute caregivers for adult foster homes shall satisfactorily meet all educational requirements established by the Department of Human Services. After consultation with representatives of providers, educators, residents' advocates and the Long Term Care Ombudsman, the department shall adopt by rule standards governing the educational requirements. The rules shall require that no person may provide care to any resident prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety and welfare of the resident. Each provider shall document compliance with the educational requirements for persons subject thereto.

(2) The rules required under subsection (1) of this section shall include but need not be limited to the following:

(a) A requirement that, before being licensed, a provider successfully completes training that satisfies a defined curriculum, including demonstrations and practice in physical caregiving, screening for care and service needs, appropriate behavior towards residents with physical, cognitive and mental disabilities and issues related to architectural accessibility; and

(b) A requirement that a provider pass a test before being licensed or becoming a resident manager. The test shall evaluate the ability to understand and respond appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, residents' preferences and conflicts.

(3) After consultation with representatives of providers, educators, residents' advocates and the Long Term Care Ombudsman, the department may adopt by rule exceptions to the training requirements of subsections (1) and (2) of this section for persons who are appropriately licensed medical care professionals in Oregon or who possess sufficient education, training or experience to warrant an exception. The department shall not make any exceptions to the testing requirements.

(4) The department may permit a person who has not completed the training or passed the test required in subsection (2) of this section to act as a resident manager until the training and testing are completed or for 60 days, whichever is shorter, if the department determines that an unexpected and ur-

gent staffing need exists. The licensed provider must notify the department of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the person has met the requirements for a substitute caregiver for the adult foster home and that the provider will provide adequate supervision.

(5) Providers shall serve three nutritionally balanced meals to residents each day. A menu for the meals for the coming week shall be prepared and posted weekly.

(6) Providers shall make available at least six hours of activities each week which are of interest to the residents, not including television or movies. The department shall make information about resources for activities available to providers upon request. Providers or substitute caregivers shall be directly involved with residents on a daily basis.

(7) Providers shall give at least 30 days' written notice to the residents, and to the legal representative, guardian or conservator of any resident, before selling, leasing or transferring the adult foster home business or the real property on which the adult foster home is located. Providers shall inform real estate licensees, prospective buyers, lessees and transferees in all written communications that the license to operate an adult foster home is not transferable and shall refer them to the department for information about licensing.

(8) If a resident dies, or leaves an adult foster home for medical reasons and indicates in writing the intent to not return, the provider shall not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the resident has left the adult foster home. The provider has an affirmative duty to take reasonable actions to mitigate the damages by accepting a new resident. However, if a resident dies or leaves an adult foster home due to neglect or abuse by the provider or due to conditions of imminent danger to life, health or safety, the provider shall not charge the resident beyond the resident's last day in the home. The provider shall refund any advance payments within 30 days after the resident dies or leaves the adult foster home.

(9) Chemical and physical restraints may be used only after considering all other alternatives and only when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Restraints may not be used for discipline of a resident or for the convenience of the adult foster home. Restraints may be used only as follows:

(a) Psychoactive medications may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.

(b) Physical restraints may be used only pursuant to a qualified practitioner's order that specifies the type, circumstances and duration of use in accordance with rules adopted by the department. The rules adopted by the department relating to physical restraints shall include standards for use and training.

(10) If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the provider shall demonstrate how regular positive contact will occur. Providers shall not place residents who are unable to walk without assistance in a basement, split-level, second story or other area that does not have an exit at ground level. Nonambulatory residents shall be given first floor rooms.

(11)(a) The provider shall not transfer or discharge a resident from an adult foster home unless the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the welfare of other residents, or due to nonpayment. In such cases, the provider shall give the resident written notice as soon as possible under the circumstances.

(b) The provider shall give the resident and the resident's legal representative, guardian or conservator written notice at least 30 days prior to the proposed transfer or discharge, except in a medical emergency including but not limited to a resident's experiencing an increase in level of care needs or engaging in behavior that poses an imminent danger to self or others. In such cases, the provider shall give the resident written notice as soon as possible under the circumstances.

(c) The resident shall have the right to an administrative hearing prior to an involuntary transfer or discharge. If the resident is being transferred or discharged for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the transfer or discharge. The provider shall hold a space available for the resident pending receipt of an administrative order. ORS 441.605 (4) and the rules thereunder governing transfer notices and hearings for residents of long term care facilities shall apply to adult foster homes.

(12) The provider shall not include any illegal or unenforceable provision in a contract with a resident and shall not ask or require a resident to waive any of the resident's rights.

(13) Any lessor of a building in which an adult foster home is located shall not interfere with the admission, discharge or transfer of any resident in the adult foster home unless the lessor is a provider or coprovider on the license. [1991 c.960 §3; 1995 c.180 §3; 1995 c.667 §11; 2001 c.300 §70; 2003 c.14 §260]

443.739 Rights of residents. Residents of adult foster homes have the following rights. Providers shall guarantee these rights and help residents exercise them. The provider shall post a copy of the Residents' Bill of Rights in the entry or other equally prominent place in the adult foster home. The Residents' Bill of Rights states that each resident of an adult foster home has the right to:

(1) Be treated as an adult, with respect and dignity.

(2) Be informed of all resident rights and all house rules.

(3) Be encouraged and assisted to exercise legal rights, including the right to vote.

(4) Be informed of the resident's medical condition and the right to consent to or refuse treatment.

(5) Receive appropriate care and services, and prompt medical care as needed.

(6) A safe and secure environment.

(7) Be free from mental and physical abuse.

(8) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner.

(9) Complete privacy when receiving treatment or personal care.

(10) Associate and communicate privately with any person the resident chooses.

(11) Send and receive personal mail unopened.

(12) Participate in activities of social, religious and community groups.

(13) Have medical and personal information kept confidential.

(14) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(15) Manage the resident's own money and financial affairs unless legally restricted.

(16) Be free from financial exploitation. The provider shall not charge or ask for application fees or nonrefundable deposits and shall not solicit, accept or receive money or property from a resident other than the amount agreed to for services.

(17) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home.

(18) Not to be transferred or moved out of the adult foster home without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge a resident only for medical reasons including a medical emergency described in ORS 443.738 (11)(b), or for the welfare of the resident or other residents, or for nonpayment.

(19) Be free of discrimination in regard to race, color, national origin, sex or religion.

(20) Make suggestions and complaints without fear of retaliation. [1991 c.960 §11; 1995 c.667 §12; 2003 c.14 §261]

443.740 Information on licensed adult foster homes; availability; content. (1) The Department of Human Services shall maintain current information on all licensed adult foster homes and shall make that information available to prospective residents and other interested members of the public at local department offices or area agencies on aging licensing offices throughout the state.

(2) The information shall include:

(a) The location of the adult foster home;

(b) A brief description of the physical characteristics of the home;

(c) The name and mailing address of the provider;

(d) The license classification of the home and the date the provider was first licensed to operate that home;

(e) The date of the last inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;

(f) Copies of all complaint investigations involving the home, together with the findings of the department, the actions taken by the department and the outcome of the complaint investigation;

(g) An explanation of the terms used in the investigation report;

(h) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and

(i) Whether care is provided primarily by the licensed provider, a resident manager or other arrangement.

(3) Any list of adult foster homes maintained or distributed by the department or a local licensing office shall include notification to the reader of the availability of public records concerning the homes. [1995 c.667 §17; 1997 c.741 §1; 2001 c.447 §3; 2003 c.14 §262]

Note: See note under 443.730.

443.745 Denial, suspension or revocation; conditional license; review. (1) A license may be denied, suspended, revoked or have conditions attached upon a finding by the Department of Human Services of any of the following:

(a) There exists a threat to the health, safety or welfare of any resident.

(b) There is reliable evidence of abuse, neglect or exploitation of any resident.

(c) The facility is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted thereunder.

(d) Such other circumstances as may be established by the department by rule.

(2) Conditions attached to a license shall be effective upon order of the Director of Human Services.

(3) Suspension or revocation of a license authorized by this section for any reason other than abuse, neglect or exploitation of the resident shall be preceded by a hearing under ORS chapter 183 if requested by the provider.

(4) If the license is suspended or revoked for the reason of abuse, neglect or exploitation of a resident, the provider may request a review in writing within 10 days after notice of the suspension or revocation. If a request is made, the director shall review all material relating to the allegation of abuse, neglect or exploitation and to the suspension or revocation within 10 days of the request. The director shall determine, based on review of the material, whether or not to sustain the decision to suspend or revoke. If the director determines not to sustain the decision, the license shall be restored immediately. The decision of the director is subject to judicial review as a contested case under ORS chapter 183.

(5) In the event the license to maintain an adult foster home is ordered suspended or revoked, the department may withhold service payments until the defective situation is corrected. For protection of residents, the department may arrange for them to move.

(6) A provider whose license has been revoked or whose application has been denied shall not be permitted to make a new application for one year from the date the revocation or denial is final, or for a longer period specified in the order revoking or denying the license.

(7) The department shall deny the application or revoke the license of any person who falsely represents that the person has not been convicted of a crime. [1983 c.629 §5; 1985 c.663 §5; 1987 c.431 §1; 1995 c.667 §13]

443.755 Entry and inspection of homes; access to residents; inspection report; fire inspection. (1) The Department of Human Services staff shall be permitted access to enter and inspect all licensed adult foster homes. The department shall be permitted access to enter and inspect any unlicensed adult foster home upon the receipt of an oral or written complaint, or in case the department itself has cause to believe that an adult foster home is operating without a license or there exists a threat to the health, safety or welfare of any resident. The department staff shall be permitted access to the residents of adult foster homes in order to interview residents privately and to inspect residents' records.

(2) The state or local fire inspectors shall be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the department.

(3)(a) The Department of Human Services shall provide to each licensed adult foster home in the state in writing in clear concise language readily comprehensible by the average person a copy of the inspection report of the most recent inspection of that home conducted by the department.

(b) The provider shall post the inspection report in the entry or equally prominent place and shall, upon request, provide a copy of the information to each resident of, or person applying for admission to, the home, or the legal representative, guardian or conservator of the resident or applicant. [1983 c.629 §6; 1985 c.663 §6; 1991 c.960 §6]

443.760 Application of single family dwelling code requirements to home; evacuation requirement; lease rate. (1) Adult foster homes that are certified as residential homes as defined in ORS 197.660 shall meet all state and local building, sanitation, utility and fire code requirements applicable to single family dwellings. However, by rule, the Department of Human Services may adopt more stringent standards upon a finding that there is a significant health or safety threat to residents that necessitates a standard not imposed on other single family dwellings.

(2) In adopting more stringent standards, the department shall consult with the Department of Consumer and Business Services and the office of the State Fire Marshal to insure adequate evacuation of residents.

(3) As used in this section, "adequate evacuation" means the ability of a provider to evacuate all residents from the dwelling within three minutes.

(4) If a licensed provider rents or leases the premises where the adult foster home is

located, the lessor shall charge a flat rate for the lease or rental. [1993 c.146 §1; 1995 c.180 §4]

443.765 Complaint procedure; retaliation prohibited; notice of rates and rules; liability for complaints. (1) Complaints against adult foster homes may be filed with the Department of Human Services by any person, whether or not a resident of the home. The department shall investigate complaints regarding adult foster homes and shall adopt by rule standards governing investigations pursuant to this section.

(2) The department shall prepare a notice which must be posted in a conspicuous place in each adult foster home stating the telephone number of the department and the procedure for making complaints.

(3) The department shall maintain a file of all complaints and the action taken on the complaint, indexed by the name of the owner or operator. When the department concludes the investigation of a complaint, the department shall clearly designate the outcome of the complaint investigation in the complaint file. The filed complaint forms shall protect the privacy of the complainant, the resident and the witnesses.

(4) Any person has a right to inspect and photocopy the complaint files maintained by the department.

(5)(a) The owner or operator of an adult foster home may not prohibit, discourage or use intimidation against any person to prevent the filing of a complaint with the department.

(b) If a resident, or a person acting on the resident's behalf, files a complaint with the department, the owner or operator of an adult foster home may not retaliate against the resident by:

(A) Increasing charges;

(B) Decreasing services, rights or privileges;

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

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

(E) Abusing or threatening to harass or abuse a resident in any manner.

(c) The owner or operator of an adult foster home may not retaliate against any person who files a complaint or any witness or employee of a facility interviewed about the complaint, including but not limited to retaliation by restriction of otherwise lawful access to the adult foster home or to any resident thereof, or, if an employee, to dismissal or harassment.

(6) The provider shall give all residents, upon admission, a notice of the monthly rates and the house rules.

(7) Anyone participating in good faith in the filing of a complaint pursuant to this section is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the filing or substance of the complaint. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from the complaint. A person does not act in good faith for the purposes of this subsection if the substance of the complaint is false and:

(a) The person knows that the substance of the complaint is false; or

(b) The person makes the complaint with the intent to harm the owner or operator of the adult foster home, or the adult foster home, and the person shows a reckless disregard for the truth or falsity of the substance of the complaint. [1983 c.629 §7; 1985 c.651 §3; 1991 c.960 §7; 2001 c.447 §1]

443.767 Investigation of complaint; rules. (1) When the Department of Human Services receives a complaint that alleges that a resident of a licensed adult foster home has been injured, abused or neglected, and that the resident's health or safety is in imminent danger, or that the resident has died or been hospitalized, the investigation shall begin immediately after the complaint is received. If the investigator determines that the complaint is substantiated, the department shall take appropriate corrective action immediately.

(2) When the department receives a complaint that alleges the existence of any circumstance that could result in injury, abuse or neglect of a resident of a licensed adult foster home, and that the circumstance could place the resident's health or safety in imminent danger, the department shall investigate the complaint promptly. If the investigator determines that the complaint is substantiated, the department shall take appropriate corrective action promptly.

(3) After public hearing, the department shall by rule set standards for the procedure, content and time limits for the initiation and completion of investigations of complaints. The time limits shall be as short as possible and shall vary in accordance with the severity of the circumstances alleged in the complaint. In no event shall the investigation exceed a duration of 60 days, unless there is an ongoing concurrent criminal investigation, in which case the department may take a reasonable amount of additional time in which to complete the investigation.

(4) The department shall take no longer than 60 days from the completion of the investigation report to take appropriate corrective action in the case of any complaint that the investigator determines to be substantiated.

(5)(a) The department shall mail a copy of the investigation report within seven days of the completion of the report to:

(A) The complainant, unless the complainant requests anonymity;

(B) The resident, and any person designated by the resident to receive information concerning the resident;

(C) The facility; and

(D) The Long Term Care Ombudsman.

(b) The copy of the report shall be accompanied by a notice that informs the recipient of the right to submit additional evidence.

(6) The complaint and the investigation report shall be available to the public at the local department office or the type B area agency on aging, if appropriate. When the department or type B area agency on aging concludes the investigation of a complaint, the department or type B area agency on aging shall clearly designate the outcome of the complaint investigation and make the designation available to the public together with the complaint and the investigation report.

(7) A copy of the report shall be forwarded to the department whether or not the investigation report concludes that the complaint is substantiated. [1991 c.960 §8; 2001 c.447 §2; 2001 c.900 §190]

443.775 Rules; level of care; exception to limit on residents with nursing care needs; reports on exceptions; provider duties; enforcement; civil penalties. (1) The Department of Human Services shall adopt rules governing adult foster homes and the level of care provided in such homes, including the provision of care to more than one person with nursing care needs under specified conditions and department approval, such as are necessary to protect the health, safety or welfare of the residents and to provide for an appropriate continuum of care, but shall not be inconsistent with the residential nature of the living accommodations and the family atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

(a) An exception to the limit of one resident with nursing care needs may be granted if the provider proves to the department by clear and convincing evidence that such an exception will not jeopardize the care, health, safety or welfare of the residents and that the provider is capable of meeting the additional care needs of the new resident.

(b) The department, and the counties acting under the exemption granted pursuant to ORS 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions granted during the quarter pursuant to paragraph (a) of this subsection.

(2) The provider may not employ a resident manager who does not meet the classification standard for the adult foster home.

(3) The provider shall be able to meet the night care needs of a resident before admitting the resident. The provider shall include night care needs in the resident's care plan.

(4) The provider shall screen a prospective resident before admitting the resident. The screening shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall be given to the prospective resident or the prospective resident's representative.

(5) The department shall make rules to assure that any employee who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation.

(6) For adult foster homes in which clients reside for whom the department pays for care, including homes in which the provider and the resident are related, the department may require substantial compliance with its rules relating to standards for care of the client as a condition for paying for care.

(7) By order the Director of Human Services may delegate authority under this section to personnel other than of the department.

(8) The department may commence a suit in equity to enjoin maintenance of an adult foster home if:

(a) The home is operated without a valid license under this section; or

(b) After the license to maintain the home is ordered suspended or revoked, a reasonable time for placement of residents in other facilities has been allowed but such placement has not been accomplished.

(9) The department shall establish by rule the maximum capacity of adult foster homes, including all nonrelated and related persons receiving residential care and day care.

(10) Any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted thereunder may be subjected to the imposition of a civil penalty, to be fixed by the director by rule, not to exceed $100 per violation, to a maximum of $250 or, per oc-

currence of substantiated abuse, a maximum of $1,000. [1983 c.629 §8; 1985 c.663 §7; 1987 c.369 §2; 1987 c.430 §2; 1987 c.431 §2; 1991 c.960 §9; 1995 c.667 §14; 2001 c.900 §191]

443.780 Exemption where county has licensing and inspection program. (1) The Director of Human Services may exempt from the license, inspection and fee provisions of ORS 443.705 to 443.825 adult foster homes in those counties where there is a county agency which provides similar programs for licensing and inspection that the director finds are equal to or superior to the requirements of ORS 443.705 to 443.825.

(2) ORS 443.775 (5) applies regardless of any exceptions granted to a county agency. [1985 c.663 §11; 1995 c.667 §19]

443.785 Admission of Medicaid recipients. The Department of Human Services may not require an adult foster home that elects to provide care for a Medicaid recipient to admit an additional Medicaid resident under a contract with the department. [1999 c.204 §2]

443.790 Authority of director to impose civil penalty; factors to be considered. (1) In addition to any other liability or penalty provided by law, the Director of Human Services may impose a civil penalty on a person for any of the following:

(a) Violation of any of the terms or conditions of a license issued under ORS 443.735.

(b) Violation of any rule or general order of the Department of Human Services that pertains to a facility.

(c) Violation of any final order of the director that pertains specifically to the facility owned or operated by the person incurring the penalty.

(d) Violation of ORS 443.745 or of rules required to be adopted under ORS 443.775.

(2) The director shall impose a civil penalty of not to exceed $500 on any adult foster home for falsifying resident or facility records or causing another to do so.

(3) The director shall impose a civil penalty of $250 on a provider who violates ORS 443.725 (3).

(4) The director shall impose a civil penalty of not less than $250 nor more than $500 on a provider who admits a resident knowing that the resident's care needs exceed the license classification of the provider if the admission places the resident or other residents at grave risk of harm.

(5)(a) In every case other than those involving the health, safety or welfare of a resident, the director shall prescribe a reasonable time for elimination of a violation but except as provided in paragraph (b) of this subsection shall not prescribe a period to exceed 30 days after notice of the violation.

(b) The director may approve a reasonable amount of time in excess of 30 days if correction of the violation within 30 days is determined to be impossible.

(6) In imposing a civil penalty, the director shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules or orders pertaining to facilities.

(c) The economic and financial conditions of the person incurring the penalty.

(d) The immediacy and extent to which the violation threatens or threatened the health, safety or welfare of one or more residents.

(7) The department shall adopt rules establishing objective criteria for the imposition and amount of civil penalties under this section. [1987 c.431 §§4,6; 1991 c.413 §6; 1991 c.960 §10; 1995 c.667 §15]

443.795 Civil penalty; notice; hearing. (1) Any civil penalty under ORS 443.790 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the Director of Human Services.

(3) The Department of Human Services shall conduct the hearing and issue the final order within 180 days after any hearing request. [1987 c.431 §5; 1991 c.734 §25; 1991 c.960 §12; 2003 c.14 §263]

443.805 [1987 c.431 §7; repealed by 1991 c.734 §122]

443.815 Judicial review of penalties. Judicial review of civil penalties imposed under ORS 443.790 shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty. [1987 c.431 §8]

443.825 Disposition of penalties recovered. All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [1987 c.431 §9]

DEVELOPMENTAL DISABILITY CHILD FOSTER HOMES

443.830 Definitions for ORS 443.830 and 443.835. As used in this section and ORS 443.835:

(1) "Child" means a person for whom developmental disability services are planned and provided and who is:

(a) Under 18 years of age; or

(b) At least 18 years of age but less than 22 years of age and resides in a developmental disability child foster home and whose needs, as determined by the individual support plan team, are best met if services are provided in a developmental disability child foster home.

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

(3)(a) "Developmental disability child foster home" means any home maintained by a person who has under the care of the person, in the home, a child found eligible for developmental disability services for the purpose of providing the child with supervision, food and lodging. The child must be unrelated to the person by blood or marriage and be unattended by the child's parent or guardian.

(b) "Developmental disability child foster home" does not include:

(A) A boarding school that is essentially and primarily engaged in educational work;

(B) A home in which a child is provided with room and board by a school district board; or

(C) A foster home under the direct supervision of a private child-caring agency.

(4) "Individual support plan team" means a team composed of the child, the child's parent or guardian, the community mental health program representative and representatives of all current service providers that develops a written plan of services covering a 12-month period for a child. [1999 c.316 §4; 2001 c.463 §1; 2001 c.900 §192]

Note: 443.830 and 443.835 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 443 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

443.835 Certificate required; rules. (1) A person may not operate a developmental disability child foster home without having a certificate issued by the Department of Human Services.

(2) A person may apply for a certificate to operate a developmental disability child foster home by submitting an application to the department on a form furnished by the department.

(3) Upon receipt of an application under subsection (2) of this section, the department shall cause an investigation to be made of the applicant and the applicant's home. The department shall determine whether to issue a certificate to the applicant and, if a certificate is to be issued, whether to issue a conditional certificate or a regular certificate. The certificate shall be in the form prescribed by the department by rule.

(4) After notice and an opportunity for hearing as provided in ORS 183.310 to 183.482, the department may deny, refuse to renew or revoke a certificate to operate a developmental disability child foster home. A person whose application for a certificate has been denied, not renewed or revoked may appeal the decision to the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases.

(5) The department may adopt rules to carry out the intent and purposes of this section and ORS 443.830. [1999 c.316 §5]

Note: See note under 443.830.

HOSPICE PROGRAMS

443.850 Definitions for ORS 443.850 to 443.870. As used in ORS 443.850 to 443.870:

(1) "Hospice program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life threatening disease with a limited prognosis.

(2) "Hospice services" means items and services provided to a patient-family unit by a hospice program or by other individuals or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include acute, respite, home care and bereavement services provided to meet the physical, psychosocial, spiritual and other special needs of a patient-family unit during the final stages of illness, dying and the bereavement period.

(3) "Interdisciplinary team" means a group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the patient-family unit, attending physician and one or more of the following hospice program personnel: Physician, nurse, nurse's aide, occupational therapist, physical therapist, trained lay volunteer, clergy or spiritual counselor, and credentialed mental health professional such as psychiatrist, psychologist, psychiatric nurse or social worker.

(4) "Patient-family unit" includes an individual who has a life threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the individual.

(5) "Person" includes individuals, organizations and groups of organizations. [1987 c.398 §1; 1989 c.697 §3]

443.860 Certification or accreditation required; exception. (1) Except as provided in subsections (3) and (4) of this section, no person shall establish, conduct or maintain a hospice program providing hospice services, or hold itself out to the public as a hospice program, without:

(a) Certification by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting standards for Medicare reimbursement;

(b) Accreditation by the Oregon Hospice Association; or

(c) Accreditation by the Joint Commission on Accreditation of Healthcare Organizations as a program of hospice services.

(2) The Oregon Hospice Association may accredit hospices which are not members of the Oregon Hospice Association.

(3) Any person who is in the process of developing a hospice program may use the term "hospice" to describe and refer to the program of services during its development for up to two years. However, no hospice services to patients or their families shall be provided by a hospice until accreditation or certification is obtained.

(4) Any person may operate a hospice program for a period of not more than 90 consecutive days if the federal Centers for Medicare and Medicaid Services or the Oregon Hospice Association acknowledges in writing that accreditation or certification is pending and the Oregon Hospice Association authorizes that operations may commence.

(5) A certified or accredited hospice need not obtain a license pursuant to ORS 443.015 unless it meets the definition of a home health agency and receives direct compensation for home health care services from the patient, insurers, Medicare or Medicaid. Compensation paid to licensed professionals is not direct compensation. [1987 c.398 §§2,3; 1989 c.697 §1; 1993 c.110 §3; 1997 c.362 §1; 2003 c.14 §264]

443.865 Enforcement; rules; civil penalties. (1) Upon the recommendation of the Oregon Hospice Association, the Department of Human Services shall enforce compliance with the provisions of ORS 443.860 (1), (3), (4) and (5).

(2) The Department of Human Services shall adopt rules pursuant to ORS chapter 183 to implement subsection (1) of this section. Depending upon the seriousness of the noncompliance, the enforcement mechanisms to be used shall include, but not be limited to, the imposition of civil penalties and the issuance of an order to cease operations. [1993 c.110 §2]

443.870 Hospice program registry. The Oregon Hospice Association shall maintain and operate a registry of all certified and accredited hospice programs and all developing hospice programs and shall make such records available to the public. [1987 c.398 §4; 1993 c.110 §4]

PROPERTY OF RESIDENTS

443.880 Responsibilities of residential facility regarding property of resident. (1) The admission of a person to a residential facility shall not act to create in the facility, its owner, administrator or employee any authority to manage, use or dispose of any property of the resident, or any authority or responsibility for the personal affairs of the person, except as may be necessary for the safety and orderly management of the facility and as may be required by this section.

(2) No owner, administrator or employee of a residential facility may act as guardian, conservator, trustee or attorney in fact for any resident of the facility unless the resident is related to the owner, administrator or employee within the third degree of consanguinity. This subsection shall not prevent the owner, administrator or employee of a residential facility from acting as a representative payee for the resident.

(3) A residential facility shall provide for the safekeeping of personal effects, funds and other property of its residents.

(4) A residential facility shall keep complete and accurate records of all funds and other property of its residents received by the facility for safekeeping.

(5) Any funds or other property belonging to or due to a resident of a residential facility which are received by a residential facility shall be held in trust and shall be held separate from the funds and property of the facility and shall be used only for the account of the resident. Upon request, the facility shall furnish the resident a complete and certified statement of all funds or other property to which this section applies, detailing the amounts and items received, together with their sources and disposition.

(6) For the purposes of this section, "residential facility" means a domiciliary care facility as defined by ORS 443.205, a long term care facility as defined by ORS 442.015, a residential facility as defined by ORS 443.400, an adult foster home as defined by ORS 443.705 and any residential facility required to be registered under ORS 443.480 to 443.500. [1991 c.413 §1; 1997 c.249 §144]

443.881 Transfer of property; undue influence. (1) No owner, employee or administrator of a residential facility as defined by ORS 443.880 shall cause any person who

is a resident of the facility to deliver to the owner, employee or administrator any funds or property of the resident by the exercise of undue influence.

(2) For the purposes of this section, "undue influence" means that an owner, employee or administrator of a residential facility has substituted the will or interests of the owner, employee or administrator for the will or interests of the resident of the facility. [1991 c.413 §2]

ALZHEIMER'S DISEASE

443.885 Registration of certain facilities. Any facility that provides care for patients or residents with Alzheimer's disease or other dementia by means of an Alzheimer's care unit must register with the Department of Human Services. [1991 c.416 §1; 2003 c.14 §265]

443.886 Special indorsement required; standards; fees; rules. (1) On and after June 1, 1993, whenever any facility intends to provide care for patients or residents with Alzheimer's disease or other dementia by means of an Alzheimer's care unit, the facility must obtain a special indorsement on its license or registration.

(2) The Department of Human Services, with the input from representatives of advocate groups and the long term care industry, shall adopt by rule standards that assure that the special needs of any Alzheimer's patient or resident who is cared for in a special unit are met and that quality care is provided. The standards must include but are not limited to provisions for:

(a) Care planning, including physical design, staffing, staff training, safety, egress control, individual care planning, admission policy, family involvement, therapeutic activities and social services;

(b) Continuity of basic care requirements; and

(c) Marketing and advertising of the availability of and services from Alzheimer's care units.

(3) The department shall adopt a fee schedule for indorsement, taking into account the type of facility and the number of patients and residents.

(4) The department shall enforce rules adopted under subsection (2) of this section and shall allow a licensee or registrant to retain the special indorsement required to care for patients and residents with Alzheimer's disease or other dementia only so long as the licensee or registrant complies with the rules.

(5) The special indorsement may be suspended or revoked in the same manner as the license or registration is suspended or revoked.

(6) Unless a facility has obtained the indorsement required by subsection (1) of this section, the facility shall not:

(a) Advertise the facility as providing an Alzheimer's care unit; or

(b) Market the facility as providing an Alzheimer's care unit.

(7) As used in this section:

(a) "Alzheimer's care unit" means a special care unit in a designated, separated area for patients and residents with Alzheimer's disease or other dementia that is locked, segregated or secured to prevent or limit access by a patient or resident outside the designated or separated area.

(b) "Facility" means a nursing home, residential care facility, assisted living facility or any other like facility required to be licensed by the department.

(c) "Registry" means a facility will provide the department with information relating to the Alzheimer's care unit including the number of residents in the unit, stage of dementia for each resident, description of how services are provided, and length of time the unit has been operating. [1991 c.416 §2; 2001 c.900 §193]

MISCELLANEOUS

443.888 Exemption from ad valorem property taxation for certain facilities; certification. (1)(a) The owner of a long term care facility seeking to have the facility be exempt from ad valorem property taxation under ORS 307.811 shall apply to the Department of Human Services for certification of the facility as an essential community provider long term care facility.

(b) The application shall be made after the close of the calendar year for which the average percentage of residents eligible for medical assistance under Medicaid is to be determined.

(2) The application shall be in the form and shall contain the information prescribed by the department, including but not limited to:

(a) The location of the long term care facility; and

(b) A statement of the number of residents of the long term care facility during the previous calendar year and the number of those residents who were eligible for Medicaid.

(3) The department shall act upon an application within 15 days after the date the application has been filed with the depart-

ment and all requested information has been provided by the applicant.

(4) The department shall certify a long term care facility as an essential community provider long term care facility if the facility:

(a) Is a nursing facility, assisted living facility or residential care facility and has an average residency rate of 70 percent or more who are eligible for Medicaid; or

(b) Is an adult foster home and has an average residency rate of 60 percent or more who are eligible for Medicaid.

(5) The department shall send the certification to the applicant. The certification shall state the tax year for which the certification is valid.

(6) A certification under this section shall be valid for the tax year beginning the July 1 immediately following the calendar year in which the long term care facility met the Medicaid eligibility residency rate set forth in subsection (4) of this section.

(7) As used in this section, "long term care facility" means a nursing facility, assisted living facility, residential care facility or adult foster home as defined in ORS 443.705. [1999 c.476 §4]

Note: 443.888 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 443 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

443.990 [Subsection (2) enacted as 1953 c.659 §14; 1969 c.641 §17; repealed by 1977 c.717 §23]

443.991 Penalties. (1) Violation of ORS 443.015 is punishable as a Class C misdemeanor.

(2) Violation of any provision of ORS 443.400 to 443.455 is a Class B misdemeanor. In addition, the Department of Human Services may commence an action to enjoin operation of a residential facility:

(a) When a residential facility is operated without valid licensure; or

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed.

(3) Violation of ORS 443.725 is punishable as a Class C misdemeanor.

(4) Violation of any provision of ORS 443.755 is a Class B misdemeanor. In addition, the department may commence an action to enjoin operation of an adult foster home:

(a) When an adult foster home is operated without a valid license; or

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed.

(5) Violation of ORS 443.881 is punishable as a Class C misdemeanor. [Subsection (1) enacted as 1977 c.738 §11; subsection (2) enacted as 1977 c.717 §14; 1979 c.284 §144; 1985 c.663 §8; subsection (5) enacted as 1991 c.413 §3]