Chapter 441

2005 EDITION

Health Care Facilities

LICENSING AND SUPERVISION OF FACILITIES AND ORGANIZATIONS

441.015 Licensing of facilities and health maintenance organizations; compliance with rules and standards

441.017 Exclusions from licensing requirements for health care facilities

441.020 Application; fees

441.022 Factors to be considered in licensing

441.025 License issuance; renewal; disclosure; transfer; posting

441.030 Denial, suspension or revocation of licenses; restrictions on admission

441.037 Hearings; procedures; judicial review

441.050 Additional remedies

441.055 Rules; evidence of compliance; health care facilities to ensure compliance; medical staff bylaws; peer review; procedure

441.057 Rules concerning complaints about care; reporting by employee

441.059 Access to previous X-rays and reports by patients of chiropractic physicians

441.060 Inspections; approval of plans and specifications; rules; fees

441.061 Delegation of health inspections to local governmental agencies; financial assistance

441.062 Coordination of inspections; rules

441.063 Use of facilities by licensed podiatric physicians and surgeons; regulation of admission and conduct

441.064 Use of facilities by licensed nurse practitioners; rules regarding admissions and privileges

441.065 Exemption of certain religious institutions

441.067 Inspection reports, complaint procedures and rules; posting

441.073 Rules regarding staff ratio in long term care facilities; variances; posting

441.077 Revocation of license and other penalties for imposing restrictions upon certain physicians; construction of section

441.083 Drug information to be provided patients of long term and intermediate care facilities

441.084 Choice of patient on suppliers of drugs and supplies

441.085 Rules establishing licensing classifications; use of descriptive titles limited

441.087 General inspection

441.089 Application of Health Care Quality Improvement Act of 1986

441.094 Denial of emergency medical services because of inability to pay prohibited

441.096 Identification badges

ADMISSION TO OR MOVE FROM LONG TERM CARE FACILITY OR RESIDENTIAL CARE FACILITY OF PERSON CONVICTED OF SEX CRIME

(Temporary provisions relating to admission to or move from long term care facility or residential care facility of person convicted of sex crime are compiled as notes following ORS 441.096)

LONG TERM CARE OMBUDSMAN

441.100 Definitions

441.103 Office of Long Term Care Ombudsman; terms; appointment; confirmation; qualifications

441.107 Funding of office

441.109 Duties of ombudsman; rules

441.113 Procedures to maintain confidentiality

441.117 Right of entry into facilities and access to records

441.121 Report after investigation; referral to other agencies

441.124 Notice of complaint procedures; posting

441.127 Immunity of employees

441.131 Appointment of designees; qualifications; duties

441.133 Effect of ORS 441.100 to 441.153 on right to visitors

441.137 Long Term Care Advisory Committee; appointment; confirmation; term; qualifications

441.142 Duties

441.146 Appeal to Long Term Care Advisory Committee

441.147 Officers; quorum; meetings; expenses

441.153 Long Term Care Ombudsman Account

HOSPITAL NURSING SERVICES

441.160 Definition for ORS 441.162 to 441.170

441.162 Written staffing plan for nursing services

441.164 Variances in staffing plan requirements

441.166 Need for replacement staff

441.168 Leaving a patient care assignment

441.170 Civil penalties; suspension or revocation of license; rules; compliance audits

441.172 Definitions for ORS 441.172 to 441.182

441.174 Retaliation prohibited

441.176 Remedies for retaliation

441.178 Unlawful employment practices; civil action for retaliation

441.180 Hospital posting of notice

441.182 Rights, privileges or remedies of nursing staff

441.192 Notice of employment outside of hospital

TRUSTEE TO ENSURE COMPLIANCE WITH CARE RULES

441.277 Definitions for ORS 441.277 to 441.323

441.281 Petition for appointment of trustee; hearing; order
441.286 Grounds for appointment of trustee
441.289 Powers and duties of trustee
441.293 Liability to trustee for goods and services after notice; effect of nonpayment
441.296 Liability for rent or contracts
441.301 Payment of expenses when income inadequate
441.303 Fees from facilities in addition to license fee; use of fees
441.306 Compensation of trustee
441.309 Trustee as public employee
441.312 License renewal of facility placed in trust
441.316 Termination of trust; extension; license revocation
441.318 Trustee accounting; lien
441.323 Effect of trust on prior obligations or civil or criminal liabilities

MOVES FROM LONG TERM CARE FACILITIES

441.357 Definitions for ORS 441.357 to 441.367
441.362 Notice by Department of Human Services prior to move or termination; hearing; consent to move; who may consent
441.367 Facility required to give notice of base rate and policy on nonpayment; rules; notice of changes; civil penalty

FINANCING OF HEALTH CARE FACILITIES CONSTRUCTION

441.525 Definitions for ORS 441.525 to 441.595
441.530 Policy
441.532 Municipalities authorized to create authority; issuance of obligations; conditions; purpose of authority
441.535 Procedure to create public authority
441.540 Board of directors; appointment; expenses; rules; quorum; personnel
441.545 Authority not to levy taxes
441.550 General powers
441.555 Issuance of revenue obligations; nature of obligation; refunding
441.560 Borrowing; bond anticipation notes
441.565 Obligations of authority not obligations of municipality
441.570 Payment of principal and interest
441.575 Authorities may act jointly
441.580 Authority as public body; tax status of assets, income and bonds
441.585 Disposition of excess earnings; disposition of assets on dissolution
441.590 Authority granted by ORS 441.525 to 441.595
441.595 Construction of ORS 441.525 to 441.595

LONG TERM CARE FACILITIES

(Nursing Home Patients' Bill of Rights)

441.600 Definitions for ORS 441.600 to 441.625
441.605 Legislative declaration of rights intended for residents
441.610 Nursing home patients' bill of rights; adoption; standards
441.615 Powers and responsibilities of department; rules
441.620 Disclosure of business information required

(Enforcement of Nursing Home Laws)

441.624 Purpose
441.625 Retaliation against resident exercising rights prohibited

(Resident Abuse)

441.630 Definitions for ORS 441.630 to 441.680 and 441.995
441.635 Legislative finding
441.637 Rules; submission of rules to advisory group
441.640 Report of suspected abuse of resident required
441.645 Oral report to area agency on aging, department or law enforcement agency
441.650 Investigation of abuse complaint; initial status report; content; distribution of report; duties of investigator; investigation report
441.655 Immunity provided reporter of abuse
441.660 Photographing resident; photograph as record
441.665 Record of reports; classification of investigation report
441.671 Confidentiality of reports; when available
441.675 Certain evidentiary privileges inapplicable
441.676 Investigation of licensing violations; powers of investigator
441.677 Letter of determination; determination rules; distribution of letter; notice to nursing assistant
441.678 Review of finding that nursing assistant responsible for abuse; name placed in registry
441.679 Preemployment inquiries; when employment prohibited
441.680 Spiritual healing alone not considered abuse of resident
441.685 Monitors; designation; duties; peer review of facilities

(Investigation of Complaints)

441.690 Complainant may accompany investigator
441.695 Conduct of investigation

(Drug Supplies for Unscheduled Leaves)

441.697 Prescribed drug supply for unscheduled therapeutic leave from long term care facility; dispensing of drugs by registered nurse

(Access)

441.700 Access to facilities by persons providing services

(Complaint File)

441.703 Complaint file; summary; availability on request

CIVIL PENALTIES

441.705 Definitions for ORS 441.705 to 441.745
441.710 Civil penalties; when imposed
441.712 Notice of civil penalty

441.715 Objective criteria for civil penalties; rules
441.720 Remittance or reduction of penalties
441.740 Judicial review
441.745 Penalties to General Fund

SUICIDE ATTEMPTS BY MINORS

441.750 Suicide attempts by minors; referral; report; disclosure of information; limitation of liability
441.755 Report form; contents

MISCELLANEOUS

441.815 Smoking of tobacco in certain hospital rooms prohibited
441.820 Procedure for termination of physician's privilege to practice medicine at health care facility; immunity from damage action for good faith report
441.825 Authority of hospital to require medical staff to provide professional liability insurance

PENALTIES

441.990 Criminal penalties
441.995 Factors considered in determining penalties under ORS 441.630 to 441.680; civil penalty

441.005 [Amended by 1971 c.730 §1; 1973 c.840 §1; repealed by 1977 c.751 §57]

441.007 [1973 c.840 §2; repealed by 1977 c.751 §39]

441.010 [Amended by 1971 c.730 §3; 1973 c.840 §3; 1977 c.751 §18; renumbered 442.300]

LICENSING AND SUPERVISION OF FACILITIES AND ORGANIZATIONS

441.015 Licensing of facilities and health maintenance organizations; compliance with rules and standards. (1) No person or governmental unit, acting severally or jointly with any other person or governmental unit, shall establish, conduct, maintain, manage or operate a health care facility or health maintenance organization, as defined in ORS 442.015, in this state without a license.

(2) Any health care facility or health maintenance organization which is in operation at the time of promulgation of any applicable rules or minimum standards under ORS 441.055 or 731.072 shall be given a reasonable length of time within which to comply with such rules or minimum standards. [Amended by 1971 c.730 §4; 1973 c.840 §4; 1977 c.751 §19; 2003 c.14 §249]

441.017 Exclusions from licensing requirements for health care facilities. For purposes of licensing health care facilities, health care facility, as defined in ORS 442.015, does not include:

(1) Facilities established by ORS 430.306 to 430.335 for treatment of alcoholism or drug abuse; and

(2) Community mental health and development disabilities programs established under ORS 430.610 to 430.695. [1981 c.231 §2; 1987 c.753 §1]

441.020 Application; fees. (1) Licenses for health care facilities including long term care facilities, as defined in ORS 442.015, shall be obtained from the Department of Human Services.

(2) Applications shall be upon such forms and shall contain such information as the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.055.

(3) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of the Department of Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607 to 431.619.

(4) Except as otherwise provided in subsection (5) of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be $750.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be $1,900.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.

(e) Two hundred or more beds, the annual license fee shall be $3,400.

(5) For long term care facilities with:

(a) Fewer than 16 beds, the annual license fee shall be up to $120.

(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to $175.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to $350.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to $450.

(e) Two hundred beds or more, the annual license fee shall be up to $580.

(6) For special inpatient care facilities with:

(a) Fewer than 26 beds, the annual license fee shall be $750.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be $1,900.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.

(e) Two hundred beds or more, the annual license fee shall be $3,400.

(7) For ambulatory surgical centers, the annual license fee shall be $1,000.

(8) For birthing centers, the annual license fee shall be $250.

(9) For outpatient renal dialysis facilities, the annual license fee shall be $1,500.

(10) During the time the licenses remain in force holders thereof are not required to pay inspection fees to any county, city or other municipality.

(11) Any health care facility license may be indorsed to permit operation at more than one location. In such case the applicable license fee shall be the sum of the license fees which would be applicable if each location were separately licensed.

(12) Licenses for health maintenance organizations shall be obtained from the Di-

rector of the Department of Consumer and Business Services pursuant to ORS 731.072. [Amended by 1957 c.697 §1; 1971 c.650 §19; 1971 c.730 §5; 1973 c.840 §5; 1977 c.284 §4; 1977 c.751 §20a; 1979 c.696 §15; 1987 c.428 §3; 1987 c.918 §7; 1995 c.449 §1; 1997 c.249 §139; 2001 c.100 §2; 2001 c.900 §161]

441.022 Factors to be considered in licensing. In determining whether to license a health care facility pursuant to ORS 441.025, the Department of Human Services shall consider only factors relating to the health and safety of individuals to be cared for therein and shall not consider whether the health care facility is or will be a governmental, charitable or other nonprofit institution or whether it is or will be an institution for profit. [1967 c.584 §2; 1971 c.730 §6; 1973 c.840 §6; 1987 c.428 §4; 2001 c.900 §162]

441.025 License issuance; renewal; disclosure; transfer; posting. (1) Upon receipt of an application and the license fee, the Department of Human Services shall issue a license if it finds that the applicant and health care facility comply with ORS 441.015 to 441.063, 441.085 and 441.087 and the rules of the department provided that it does not receive within the time specified a certificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

(2) Each license, unless sooner suspended or revoked, shall be renewable annually for the calendar year upon payment of the fee, provided that a certificate of noncompliance has not been issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

(3) Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable.

(4) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the department.

(5) No license shall be issued or renewed for any health care facility or health maintenance organization that offers or proposes to develop a new health service unless a certificate of need has first been issued therefor pursuant to ORS 442.340 (1987 Replacement Part) or approval has been granted under ORS 442.315 or section 9, chapter 1034, Oregon Laws 1989.

(6) No license shall be issued or renewed for any skilled nursing facility or intermediate care facility, as defined in ORS 442.015, unless the applicant has included in the application the name and such other information as may be necessary to establish the identity and financial interests of any person who has incidents of ownership in the facility representing an interest of 10 percent or more thereof. If the person having such interest is a corporation, the name of any stockholder holding stock representing an interest in the facility of 10 percent or more shall also be included in the application. If the person having such interest is any other entity, the name of any member thereof having incidents of ownership representing an interest of 10 percent or more in the facility shall also be included in the application.

(7) A license may be denied to any applicant for a license or renewal thereof or any stockholder of any such applicant who has incidents of ownership in the facility representing an interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for the facility, if during the five years prior to the application the applicant or any stockholder of the applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has divested that interest after receiving written notice from the department of intention to suspend or revoke the license or to decertify the home from eligibility to receive payments for services provided under this section.

(8) No license shall be issued or renewed for any long term care facility, as defined in ORS 442.015, unless the applicant has included in the application the identity of any person who has incident of ownership in the facility who also has a financial interest in any pharmacy, as defined in ORS 689.005. [Amended by 1957 c.697 §2; 1961 c.316 §6; 1967 c.89 §3; 1971 c.730 §7; 1973 c.38 §1; 1973 c.840 §7; 1977 c.261 §3; 1977 c.751 §21; 1979 c.336 §1; 1983 c.740 §156; 1985 c.747 §20; 1987 c.428 §5; 1989 c.1034 §4; 2001 c.900 §163]

441.030 Denial, suspension or revocation of licenses; restrictions on admission. (1) The Department of Human Services, pursuant to ORS 479.215, shall deny, suspend or revoke a license in any case where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(2) The department may deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085, 441.087, 441.990 (3) or the rules or minimum standards adopted under those statutes.

(3) The department may suspend or revoke a license issued under ORS 441.025 for failure to comply with a department order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087 and 441.990 (3) or ORS 441.162 or 441.166, or the rules adopted thereunder, or for failure to pay a civil penalty imposed under ORS 441.170 or 441.710.

(4) The department may order a long term care facility licensed under ORS 441.025 to restrict the admission of patients when the department finds an immediate threat to patient health and safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to 441.063, 441.084 to 441.087 and the rules adopted pursuant thereto.

(5) Any long term care facility which has been ordered to restrict the admission of patients pursuant to subsection (4) of this section shall post a notice of such restriction, provided by the department, on all doors providing ingress to and egress from the facility, for the duration of the restriction. [Amended by 1959 c.222 §1; 1961 c.316 §7; 1971 c.730 §8; 1977 c.582 §46; 1987 c.428 §6; 1989 c.171 §55; 1991 c.734 §22; 2001 c.609 §8; 2001 c.900 §164]

441.035 [Amended by 1959 c.222 §2; 1959 c.466 §1; 1971 c.730 §9; repealed by 1971 c.734 §21]

441.037 Hearings; procedures; judicial review. (1) When the Department of Human Services proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be in accordance with ORS chapter 183. [1971 c.734 §56; 1977 c.582 §47; 1987 c.428 §7; 2001 c.900 §165]

441.040 [Amended by 1959 c.222 §3; 1971 c.730 §10; repealed by 1971 c.734 §21]

441.045 [Amended by 1959 c.222 §4; 1959 c.466 §2; 1971 c.730 §11; repealed by 1971 c.734 §21]

441.050 Additional remedies. Notwithstanding the existence and pursuit of any other remedy, the Department of Human Services may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a health care facility or health maintenance organization without a license. [Amended by 1971 c.730 §12; 1973 c.840 §8; 1977 c.751 §22; 1987 c.428 §8; 2001 c.900 §166]

441.055 Rules; evidence of compliance; health care facilities to ensure compliance; medical staff bylaws; peer review; procedure. (1) The Department of Human Services shall adopt such rules with respect to the different types of health care facilities as may be designed to further the accomplishment of the purposes of ORS 441.015 to 441.087. No rules shall require any specific food so long as the necessary nutritional food elements are present.

(2) Rules describing care given in health care facilities shall include, but not be limited to, standards of patient care or patient safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records. The department may in its discretion accept certificates by the Joint Commission on Accreditation of Hospitals or the Committee on Hospitals of the American Osteopathic Association as evidence of compliance with acceptable standards.

(3) The governing body of each health care facility shall be responsible for the operation of the facility, the selection of the medical staff and the quality of care rendered in the facility. The governing body shall:

(a) Ensure that all health care personnel for whom state licenses, registrations or certificates are required are currently licensed, registered or certified;

(b) Ensure that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Ensure that procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law;

(d) Ensure that physicians admitted to practice in the facility are organized into a medical staff in such a manner as to effectively review the professional practices of the facility for the purposes of reducing morbidity and mortality and for the improvement of patient care; and

(e) Ensure that a physician is not denied medical staff membership or privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another health care facility.

(4) The physicians organized into a medical staff pursuant to subsection (3) of this section shall propose medical staff bylaws to govern the medical staff. The bylaws shall include, but not be limited to the following:

(a) Procedures for physicians admitted to practice in the facility to organize into a medical staff pursuant to subsection (3) of this section;

(b) Procedures for ensuring that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or remove officers and other persons to carry out medical staff activities with accountability to the governing body;

(d) Procedures for ensuring that physicians admitted to practice in the facility are

currently licensed by the Board of Medical Examiners for the State of Oregon;

(e) Procedures for ensuring that the facility's procedures for granting, restricting and terminating privileges are followed and that such procedures are regularly reviewed to assure their conformity to applicable law; and

(f) Procedures for ensuring that physicians provide services within the scope of the privileges granted by the governing body.

(5) Amendments to medical staff bylaws shall be accomplished through a cooperative process involving both the medical staff and the governing body. Medical staff bylaws shall be adopted, repealed or amended when approved by the medical staff and the governing body. Approval shall not be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold approval if such repeal, amendment or adoption is mandated by law, statute or regulation or is necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the failure to approve would subvert the stated moral or ethical purposes of the institution.

(6) The Board of Medical Examiners for the State of Oregon may appoint one or more physicians to conduct peer review for a health care facility upon request of such review by all of the following:

(a) The physician whose practice is being reviewed.

(b) The executive committee of the health care facility's medical staff.

(c) The governing body of the health care facility.

(7) The physicians appointed pursuant to subsection (6) of this section shall be deemed agents of the Board of Medical Examiners for the State of Oregon, subject to the provisions of ORS 30.310 to 30.400 and shall conduct peer review. Peer review shall be conducted pursuant to the bylaws of the requesting health care facility.

(8) Any person serving on or communicating information to a peer review committee shall not be subject to an action for damages for action or communications or statements made in good faith.

(9) All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the peer review committee in connection with a peer review are confidential pursuant to ORS 192.501 to 192.505 and 192.690 and all data is privileged pursuant to ORS 41.675.

(10) Notwithstanding subsection (9) of this section, a written report of the findings and conclusions of the peer review shall be provided to the governing body of the health care facility who shall abide by the privileged and confidential provisions set forth in subsection (9) of this section.

(11) Procedures for peer review established by subsections (6) to (10) of this section are exempt from ORS chapter 183.

(12) The department shall adopt by rule standards for rural hospitals, as defined in ORS 442.470, that specifically address the provision of care to postpartum and newborn patients so long as patient care is not adversely affected.

(13) For purposes of this section, "physician" has the meaning given the term in ORS 677.010. [Amended by 1965 c.352 §1; 1971 c.730 §13; 1973 c.837 §14; 1973 c.840 §9; 1977 c.261 §4; 1977 c.448 §10; 1977 c.751 §23a; 1987 c.428 §9; 1987 c.850 §2; 1993 c.269 §1; 1995 c.727 §38; 1995 c.763 §1; 1999 c.542 §1; 2001 c.900 §167]

441.057 Rules concerning complaints about care; reporting by employee. (1) Rules adopted by the Department of Human Services pursuant to ORS 441.055 shall include procedures for the filing of complaints as to the standard of care in any health care facility and provide for the confidentiality of the identity of any complainant.

(2) No health care facility, or person acting in the interest of the facility, shall take any disciplinary or other adverse action against any employee who in good faith brings evidence of inappropriate care or any other violation of law or rules to the attention of the proper authority solely because of the employee's action as described in this subsection.

(3) Any employee who has knowledge of inappropriate care or any other violation of law or rules shall utilize established reporting procedures of the health care facility administration before notifying the department or other state agency of the alleged violation, unless the employee believes that patient health or safety is in immediate jeopardy or the employee makes the report to the department under the confidentiality provisions of subsection (1) of this section.

(4) The protection of health care facility employees under subsection (2) of this section shall commence with the reporting of the alleged violation by the employee to the administration of the health care facility or to the department or other state agency pursuant to subsection (3) of this section.

(5) Any person suffering loss or damage due to any violation of subsection (2) of this section has a right of action for damages in addition to other appropriate remedy.

(6) The provisions of this section do not apply to a nursing staff, as defined in ORS 441.172, who claims to be aggrieved by a vi-

olation of ORS 441.174 committed by a hospital. [1975 c.360 §2; 1981 c.336 §1; 1987 c.428 §10; 2001 c.609 §16; 2001 c.900 §168]

441.058 [1977 c.532 §2; 1979 c.168 §1; repealed by 1983 c.781 §8]

441.059 Access to previous X-rays and reports by patients of chiropractic physicians. The rules of a hospital that govern patient access to previously performed X-rays or diagnostic laboratory reports shall not discriminate between patients of chiropractic physicians and patients of other licensed medical practitioners permitted access to such X-rays and diagnostic laboratory reports. [1979 c.490 §2]

441.060 Inspections; approval of plans and specifications; rules; fees. (1) The Department of Human Services shall make or cause to be made such inspections as it may deem necessary.

(2) The Department of Human Services may prescribe by rule that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, either prior to or after receiving a certificate of need pursuant to ORS 442.340 (1987 Replacement Part), if required, submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the rules authorized by ORS 441.055 and 443.420 and for compliance with National Fire Protection Association standards when the facility is also to be Medicare or Medicaid certified. The department may require by rule payment of a fee for project review services at a variable rate, dependent on total project cost. For health care facilities, the department shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program. The fee for project review of residential care facilities shall equal two-thirds that required of health care facilities. The department may also conduct an on-site review of projects as a prerequisite to licensure of new facilities, major renovations and expansions. The department shall, at least annually, with the advice of facilities covered by this review, present proposed rule changes regarding facility design and construction to such agencies for their consideration. The department shall also publish a state submissions guide for health and residential care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies. [Amended by 1965 c.352 §2; 1971 c.730 §14; 1973 c.840 §10; 1985 c.747 §29; 1987 c.428 §11; 1987 c.660 §23; 2001 c.104 §178; 2001 c.900 §169]

441.061 Delegation of health inspections to local governmental agencies; financial assistance. (1) Upon agreement, the Director of Human Services may grant specific authorization to any county or district board of health to administer and enforce any law or rules of the Department of Human Services relating to inspections and issuance, revocation and suspension of licenses, or portion thereof, for long term care facilities.

(2) Pursuant to an agreement as provided in subsection (1) of this section, the director may provide funds and other resources to the county or district board of health necessary to enable the county or district board of health to perform the agreed upon functions. [1977 c.261 §2; 1987 c.428 §12]

441.062 Coordination of inspections; rules. (1) In conducting inspections for the purpose of licensing health care facilities under ORS 441.020, the Department of Human Services shall avoid unnecessary facility disruption by coordinating inspections performed by the department with inspections performed by other federal, state and local agencies that have responsibility for health care facility licensure.

(2) Whenever possible, the department shall avoid duplication of inspections by accepting inspection reports or surveys prepared by other state agencies that have responsibility for health care facility licensure for purposes of the inspection required for licensure.

(3) The department shall adopt all rules necessary to implement this section. [1995 c.449 §6; 2001 c.900 §170]

Note: 441.062 was added to and made a part of 441.015 to 441.087 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

441.063 Use of facilities by licensed podiatric physicians and surgeons; regulation of admission and conduct. The rules of the hospital shall include provisions for the use of the hospital facilities by duly licensed podiatric physicians and surgeons subject to rules and regulations governing such use established by the medical staff and the podiatric staff of the hospital. Such staff comprised of physicians and or podiatric physicians and surgeons, shall regulate the admission and the conduct of the podiatric physicians and surgeons while using the facilities of the hospital and shall prescribe procedures whereby the podiatric physician and surgeon's use of the facilities may be suspended or terminated. [1973 c.279 §2]

441.064 Use of facilities by licensed nurse practitioners; rules regarding admissions and privileges. (1) The rules of any hospital in this state may grant admit-

ting privileges to nurse practitioners licensed and certified under ORS 678.375 for purposes of patient care, subject to hospital and medical staff bylaws, rules and regulations governing admissions and staff privileges.

(2) Rules shall be in writing and may include, but need not be limited to:

(a) Limitations on the scope of privileges;

(b) Monitoring and supervision of nurse practitioners in the hospital by physicians who are members of the medical staff;

(c) A requirement that a nurse practitioner co-admit patients with a physician who is a member of the medical staff; and

(d) Qualifications of nurse practitioners to be eligible for privileges including but not limited to requirements of prior clinical and hospital experience.

(3) The rules may also regulate the admissions and the conduct of nurse practitioners while using the facilities of the hospital and may prescribe procedures whereby a nurse practitioner's privileges may be suspended or terminated. The hospital may refuse such privileges to nurse practitioners only upon the same basis that privileges are refused to other medical providers.

(4) For purposes of this section, "physician" has the meaning given the term in ORS 677.010. [1993 c.34 §1; 1995 c.763 §2]

Note: 441.064 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.065 Exemption of certain religious institutions. (1) ORS 441.015 to 441.063, 441.085, 441.087 or the rules adopted pursuant thereto do not authorize the supervision, regulation or control of the remedial care or treatment of residents or patients in any home or institution that is described under subsection (2) of this section and is conducted for those who rely upon treatment solely by prayer or spiritual means, except as to the sanitary and safe conditions of the premises, cleanliness of operation and its physical equipment. This section does not exempt such a home or institution from the licensing requirements of ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463.

(2) To qualify under subsection (1) of this section, a home or institution must:

(a) Be owned by an entity that is registered with the Secretary of State as a nonprofit corporation and that does not own, hold a financial interest in, control or operate any facility, wherever located, of a type providing medical health care and services; and

(b) Provide 24 hour a day availability of nonmedical care and services.

(3) As used in this section:

(a) "Medical health care and services" means medical screening, examination, diagnosis, prognosis, treatment and drug administration. "Medical health care and services" does not include counseling or the provision of social services or dietary services.

(b) "Nonmedical care and services" means assistance or services, other than medical health care and services, provided by attendants for the physical, mental, emotional or spiritual comfort and well being of residents or patients. [Amended by 1971 c.730 §17; 1973 c.840 §11; 1977 c.751 §24; 1997 c.490 §1]

441.067 Inspection reports, complaint procedures and rules; posting. (1) The Department of Human Services shall provide to each licensed long term care facility in the state in writing in clear concise language readily comprehensible by the average person:

(a) The most recent inspection report conducted by the department of that facility;

(b) An outline of the procedures for filing complaints against long term care facilities; and

(c) A summary of rules of the department affecting patient care standards for long term care facilities.

(2) The owner or operator of a long term care facility shall post the information provided pursuant to subsection (1) of this section in a prominent place and shall, upon request, provide a copy of the information to each patient of, or person applying for admission to, the facility, or the guardian or conservator of the applicant or patient. [1975 c.360 §3; 1987 c.428 §13]

441.070 [Amended by 1959 c.222 §5; repealed by 1971 c.730 §25]

441.073 Rules regarding staff ratio in long term care facilities; variances; posting. (1) The Department of Human Services shall adopt rules specifying maximum number of patients per nursing assistant per shift in long term care facilities.

(2) The department may grant variances in the staffing requirements within a shift based on patient care needs or nursing practices.

(3) A statement of the specific staffing requirement for each time period required by subsection (1) or (2) of this section in a particular facility shall be posted by the facility in a public place within the facility. [1981 c.574 §§2,3,4; 1987 c.428 §14]

441.075 [Amended by 1969 c.314 §44; repealed by 1971 c.730 §25]

441.077 Revocation of license and other penalties for imposing restrictions upon certain physicians; construction of section. (1) If the governing body of a health care facility or health maintenance organization excludes or expels a person licensed under ORS chapter 677 from staff membership, or limits in any way the professional privilege of the person in the health care facility or health maintenance organization solely because of the school of medicine to which the person belongs, the license of the health care facility shall be subject to revocation in the manner provided in ORS 441.015 to 441.065. A health maintenance organization which violates this section shall be subject to penalties provided in ORS 731.988 and 731.992.

(2) Nothing in this section is intended to limit the authority of the governing body of a health care facility or health maintenance organization with respect to a person who has violated the reasonable rules and regulations of the health care facility or health maintenance organization or who has violated the provisions of ORS chapter 677 if the governing body has reported the violation of ORS chapter 677 to the Board of Medical Examiners for the State of Oregon in writing. [1971 c.274 §1; 1973 c.840 §12; 1977 c.751 §25]

Note: 441.077 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.080 [Repealed by 1971 c.730 §25]

441.081 [1979 c.680 §2; repealed by 1981 c.784 §38]

441.083 Drug information to be provided patients of long term and intermediate care facilities. (1) If a long term care facility or an intermediate care facility required to be licensed pursuant to ORS 441.015 charges patients for drugs, the following shall be made available to the patient on request:

(a) Name of the drug;

(b) Amount paid by the facility for the drug; and

(c) Amount charged by the facility for the drug.

(2) If a pharmacy charges any person for a drug administered to a patient in a long term care facility or an intermediate care facility, the pharmacy shall provide on request a written bill listing the:

(a) Name of the drug; and

(b) Amount charged by the pharmacy for the drug.

(3) As used in this section, "person" includes the patient and any insurance company or other party responsible for health care costs incurred by the patient. [1979 c.680 §3]

441.084 Choice of patient on suppliers of drugs and supplies. (1) A patient in a long term care facility or an intermediate care facility required to be licensed under ORS 441.015 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 nonprescriptive medication but no facility is required to accept any opened container of such medication;

(c) From among suppliers of nonprescriptive 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 nonprescriptive medication or nonprescriptive 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 patient under subsection (1)(a) of this section must also provide that information for any patient it serves at the facility. [1983 c.328 §1]

441.085 Rules establishing licensing classifications; use of descriptive titles limited. (1) The Department of Human Services may by rule establish classifications and descriptions for the various types of health care facilities that are licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463.

(2) A health care facility licensed by the department shall neither assume a descriptive title nor be represented under any descriptive title other than the classification title established by the department and under

which it is licensed. [1971 c.730 §2; 1973 c.840 §13; 1977 c.751 §26; 1987 c.428 §15; 2001 c.900 §171]

441.087 General inspection. (1) The Department of Human Services shall, in addition to any inspections conducted pursuant to complaints filed against long term care facilities, conduct at least one general inspection of each long term care facility in the state each calendar year, including, but not limited to, entering the facility, interviewing residents and reviewing records. No advance notice shall be given of any inspection conducted pursuant to this section.

(2) Any state employee giving advance notice in violation of subsection (1) of this section shall be suspended from all duties without pay for a period of at least 10 working days, or for a longer period as determined by the Director of Human Services. [1975 c.294 §§2,3; 1977 c.751 §27; 1987 c.428 §16; 2003 c.14 §250]

441.089 Application of Health Care Quality Improvement Act of 1986. The provisions of the Health Care Quality Improvement Act of 1986, P.L. No. 99-660, 100 Stat. p. 3743, 3784 (1986) apply within this state for professional review actions pursuant to ORS 441.015 to 441.087. [1987 c.850 §5]

441.090 [1971 c.730 §15; 1973 c.358 §6; 1973 c.840 §14; 1975 c.485 §1; 1977 c.751 §28; renumbered 442.320]

441.092 [1975 c.485 §4; 1977 c.751 §29; renumbered 442.330]

441.094 Denial of emergency medical services because of inability to pay prohibited. (1) No officer or employee of a hospital licensed by the Department of Human Services that has an emergency department may deny to a person an appropriate medical screening examination within the capability of the emergency department, including ancillary services routinely available to the emergency department, to determine whether a need for emergency medical services exists.

(2) No officer or employee of a hospital licensed by the Department of Human Services may deny to a person diagnosed by an admitting physician as being in need of emergency medical services the emergency medical services customarily provided at the hospital because the person is unable to establish the ability to pay for the services.

(3) Nothing in this section is intended to relieve a person of the obligation to pay for services provided by a hospital.

(4) A hospital that does not have physician services available at the time of the emergency shall not be in violation of this section if, after a reasonable good faith effort, a physician is unable to provide or delegate the provision of emergency medical services.

(5) All prepaid capitated health service contracts executed by the Department of Human Services and private health maintenance organizations and managed care organizations shall include a provision that encourages a managed care plan to establish agreements with hospitals in the plan's service area for payment of emergency screening examinations.

(6) As used in subsections (1) and (2) of this section, "emergency medical services" means medical services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide care of a woman in her labor where delivery is imminent if the hospital is so equipped and, if the hospital is not equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm. [1987 c.386 §1; 1995 c.449 §2]

Note: 441.094 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.095 [1971 c.730 §16; 1973 c.358 §7; 1973 c.840 §15; 1975 c.485 §2; 1977 c.751 §30; renumbered 442.340]

441.096 Identification badges. (1) A health care practitioner working at a health care facility and providing direct care to a patient shall wear an identification badge indicating the practitioner's name and professional title.

(2) A health care facility shall develop policies that specify the size and content of the identification badge required by subsection (1) of this section.

(3) As used in this section, "health care facility" means a health care facility as defined in ORS 442.015 or a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS 430.397 to 430.401 or ORS chapter 426 or 430. [2005 c.231 §1]

Note: 441.096 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ADMISSION TO OR MOVE FROM LONG TERM CARE FACILITY OR RESIDENTIAL CARE FACILITY OF PERSON CONVICTED OF SEX CRIME

Note: Sections 13 and 16, chapter 671, Oregon Laws 2005, provide:

Sec. 13. (1) As used in this section:

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

(b) "Long term care facility" has the meaning given that term in ORS 442.015.

(c) "Move from a long term care facility" has the meaning given that term in ORS 441.357.

(d) "Residential care facility" has the meaning given that term in ORS 443.400.

(2) If the Department of Human Services or an area agency knows that a person who is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594, is applying for admission to a long term care facility or a residential care facility, the department or area agency shall notify the facility of the person's status as a sex offender.

(3) When a person who is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594, applies for admission to a long term care facility or a residential care facility, the person shall notify the facility of the person's status as a sex offender.

(4) A long term care facility or a residential care facility may refuse admission to a person who is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594.

(5) Notwithstanding ORS 441.362 and 441.605 (4), the department may move a resident from a long term care facility without providing 30 days' written notice to the resident if the department or area agency learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594. The department shall give the resident a copy of a written notice containing information about the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for contesting the move at the time the department moves the resident.

(6)(a) Notwithstanding ORS 441.605 (4), a long term care facility may transfer or discharge a resident without reasonable advance notice of the transfer or discharge if:

(A) The facility was not notified prior to admission of the resident that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594;

(B) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594; and

(C) The resident meets the criteria established by the department by rule for transfer or discharge under this subsection.

(b) The facility shall give the resident a copy of a written notice containing information about the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for contesting the move at the time the facility transfers or discharges the resident.

(7)(a) A residential care facility may transfer or discharge a resident without reasonable advance notice of the transfer or discharge if:

(A) The facility was not notified prior to admission of the resident that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594;

(B) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.594; and

(C) The resident meets the criteria established by the department by rule for transfer or discharge under this subsection.

(b) The facility shall give the resident a copy of a written notice containing information about the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for contesting the move at the time the facility transfers or discharges the resident.

(8) If a resident requests a hearing under subsection (5), (6) or (7) of this section, the hearing must be held within five business days of the move, transfer or discharge of the resident.

(9) The department shall establish the criteria required by subsections (6)(a)(C) and (7)(a)(C) of this section so that application of the criteria results in the identification of only those persons who present a current risk of harm to another person within the facility. [2005 c.671 §13]

Sec. 16. Section 13 of this 2005 Act is repealed on January 2, 2010. [2005 c.671 §16]

441.097 [1987 c.428 §2c; repealed by 2001 c.900 §261]

LONG TERM CARE OMBUDSMAN

441.100 Definitions. (1) "Administrative action" means any action or decision made by an owner, employee or agent of a long term care facility or by a public agency that affects the services to residents.

(2) "Committee" means the Long Term Care Advisory Committee.

(3) "Designee" means an individual appointed by the Long Term Care Ombudsman to serve as a representative in order to carry out the purpose of ORS 441.100 to 441.153.

(4) "Long term care facility" means any licensed skilled nursing facility intermediate care facility, as defined in rules adopted under ORS 442.015, adult foster care homes with residents over 60 years of age and residential care facility as defined in ORS 443.400. [1981 c.534 §1; 1985 c.153 §1]

441.103 Office of Long Term Care Ombudsman; terms; appointment; confirmation; qualifications. (1) The office of the Long Term Care Ombudsman is established. The Long Term Care Ombudsman shall function separately and independently from any other state agency. The Governor shall appoint the Long Term Care Ombudsman for a four-year term from a list of three nominees nominated by the Long Term Care Advisory Committee established under ORS 441.137. Vacancies shall be filled within 60 days in the same manner as appointments are made, subject to Senate confirmation under ORS 171.562 and 171.565.

(2) The Long Term Care Ombudsman may be removed for just cause, upon recommendation to the Governor by the Long Term Care Advisory Committee.

(3) The Long Term Care Ombudsman shall have background and experience in the following areas:

(a) The field of aging;

(b) Health care;

(c) Working with community programs;

(d) Strong understanding of long term care issues, both regulatory and policy;

(e) Working with health care providers;

(f) Working with and involvement in volunteer programs; and

(g) Administrative and managerial experience. [1981 c.534 §2; 1985 c.153 §2]

441.105 [Amended by 1955 c.464 §1; 1965 c.308 §1; repealed by 1971 c.730 §25]

441.107 Funding of office. The funding for the office of the Long Term Care Ombudsman shall include at least one percent of Title III(B) of the Older Americans Act (Public Law 89-73) funding received by this state. [1981 c.534 §3]

441.109 Duties of ombudsman; rules. The office of the Long Term Care Ombudsman shall carry out the following duties:

(1) Investigate and resolve complaints made by or for residents of long term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights, including subpoenaing any person to appear, give sworn testimony or to produce documentary or other evidence that is reasonably material to any matter under investigation.

(2) Undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as may lead to improvements in the functioning of long term care facilities.

(3) Monitor the development and implementation of federal, state and local laws, regulations and policies that relate to long term care facilities in this state.

(4) Provide information to public agencies about the problems of residents of long term care facilities.

(5) Work closely with cooperative associations and citizen groups in this state.

(6) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of operation.

(7) Collaborate with the Department of Human Services and the Board of Examiners of Nursing Home Administrators to establish a statewide system to collect and analyze information on complaints and conditions in long term care facilities for the purpose of publicizing improvements and resolving significant problems.

(8) Appoint designees to serve as local representatives of the office in various districts of the state and regularly monitor their functions.

(9) Specify qualifications and duties of designees.

(10) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with the committee.

(11) Provide periodically, or at least twice annually, a report to the Governor, department and the Legislative Assembly.

(12) Prepare necessary reports with the assistance of the department. [1981 c.534 §4; 1985 c.153 §3; 2001 c.900 §172]

441.110 [Amended by 1955 c.464 §2; 1965 c.308 §2; repealed by 1971 c.730 §25]

441.113 Procedures to maintain confidentiality. The Long Term Care Ombudsman shall establish procedures to maintain the confidentiality of the records and files of residents of long term care facilities. These procedures must meet the following requirements:

(1) The ombudsman or designee shall not disclose, except to state agencies, the identity of any resident unless the complainant or the resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the disclosure may be made.

(2) The identity of any complainant or resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant, shall be confidential. If the complaint becomes the subject of judicial proceedings, the investigative information held by the ombudsman or designee shall be disclosed for the purpose of the proceedings if requested by the court. [1981 c.534 §5]

441.115 [Amended by 1965 c.308 §3; 1969 c.314 §45; repealed by 1971 c.730 §25]

441.117 Right of entry into facilities and access to records. (1) The Long Term Care Ombudsman and each designee shall have the right of entry into long term care facilities at any time considered necessary and reasonable by the ombudsman or the designee for the purpose of:

(a) Investigating and resolving complaints by residents or on their behalf;

(b) Interviewing residents, with their consent, in private;

(c) Offering the services of the ombudsman or designee to any resident, in private;

(d) Interviewing employees or agents of the long term care facility;

(e) Consulting regularly with the facility administration; and

(f) Providing services authorized by law or by rule.

(2) The Long Term Care Ombudsman shall have access to any resident's records, and to records of any public agency necessary to the duties of the office, including records on patient abuse complaints made pursuant to ORS 441.630 to 441.680 and 441.995. Nothing contained in ORS 192.518 to 192.526 is intended to limit the access of

the Long Term Care Ombudsman to medical records of residents of long term care facilities. Designees may have access to individual resident's records, including medical records as authorized by the resident or resident's legal representative, if needed to investigate a complaint.

(3) Entry and investigation authorized by this section shall be done in a manner that does not disrupt significantly the providing of nursing or other personal care to residents.

(4) The ombudsman or the designee must show identification to the person in charge of the facility. The resident shall have the right to refuse to communicate with the ombudsman or designee. The refusal shall be made directly to the ombudsman or designee and not through an intermediary.

(5) The resident shall have the right to participate in planning any course of action to be taken on behalf of the resident by the ombudsman or the designee. [1981 c.534 §6; 2001 c.104 §179; 2003 c.86 §13]

441.120 [Repealed by 1971 c.730 §25]

441.121 Report after investigation; referral to other agencies. Following an investigation, the ombudsman or the designee shall report opinions or recommendations to the party or parties affected thereby and shall attempt to resolve the complaint, using, whenever possible, informal techniques of mediation, conciliation and persuasion. Complaints of conditions adversely affecting residents of long term care facilities, or those threatening the safety or well-being of residents that cannot be resolved in the manner described in this section, shall be referred to an appropriate state agency. Programs that promote the safety or emotional or physical well-being of long term care residents shall be promoted and publicized by the ombudsman and the designees. [1981 c.534 §7]

441.124 Notice of complaint procedures; posting. (1) The Long Term Care Ombudsman shall prepare and distribute to each long term care facility in this state a written notice describing the procedures to follow in making a complaint, including the address and telephone number of the ombudsman and local designee, if any.

(2) The administrator of each long term care facility shall post the written notice required by this section in conspicuous places in the facility in accordance with procedures provided by the ombudsman and shall give such notice to any resident and legally appointed guardian, if any. [1981 c.534 §8; 2003 c.14 §253]

441.125 [Amended by 1955 c.464 §3; 1971 c.730 §18; repealed by 1977 c.751 §39]

441.127 Immunity of employees. (1) Any employee or agent of the long term care facility acting in good faith in discussing patient care pursuant to ORS 441.117 shall have immunity from any civil liability, that might otherwise be incurred or imposed with respect to the making of such report.

(2) Any employee or agent who makes a report pursuant to ORS 441.117 shall not be subjected to any retaliation by any official or other employee of a long term care facility solely for making a report, including but not limited to restriction of otherwise lawful access to the facility or to any resident thereof, or, if an employee, to dismissal or harassment.

(3) The ombudsman or the designee acting in good faith in discussing patient care pursuant to ORS 441.117 shall have immunity from any civil liability, that might otherwise be incurred or imposed with respect to the discussion. [1981 c.534 §9]

441.130 [Amended by 1955 c.464 §4; 1971 c.730 §19; repealed by 1977 c.751 §39]

441.131 Appointment of designees; qualifications; duties. (1) The appointments of designees shall be made in consultation with a local screening committee which may consist of but not be limited to persons representing:

(a) The area agency on aging.

(b) The local office of the Department of Human Services.

(c) The local health department.

(d) Senior citizens groups in the area.

(e) Long term care facilities in the area.

(f) Local elected officials.

(2) To be appointed as a designee, a person must complete six days of initial training and attend quarterly training sessions which are approved by the Long Term Care Ombudsman and which shall be coordinated and funded by the Department of Human Services subject to the availability of funds therefor. Local screening committees shall be appointed by and serve at the pleasure of the ombudsman.

(3) Designees must sign a contract with the state which outlines the scope of their duties. In districts where a designee is an employee or agent of a local entity, a three-party contract shall be executed. Violation of the contract is cause for the termination of the appointment. A directory of all designees shall be maintained in the office of the Long Term Care Ombudsman.

(4) The qualifications of designees shall include experience with long term care facilities or residents thereof or potential residents including the ability to communicate

well, to understand laws, rules and regulations, and to be assertive, yet objective.

(5) Experience in either social service, gerontology, nursing or paralegal work shall be preferred.

(6) The contract shall include statements that the purpose of the Long Term Care Ombudsman Program is to:

(a) Promote rapport and trust between the residents, staff of the nursing home and nursing home ombudsman program;

(b) Assist nursing home residents with participating more actively in determining the delivery of services in long term care facilities;

(c) Serve as an educational resource;

(d) Receive, resolve or relay concerns to the Long Term Care Ombudsman or the appropriate agency; and

(e) Assure equitable resolution of problems.

(7) The duties of the designees are to:

(a) Visit each assigned long term care facility on a regular basis:

(A) Upon arrival and departure, inform a specified staff member.

(B) Review, with a specified staff member, any problems or concerns which need to be considered.

(C) Visit individual residents and resident councils.

(b) Maintain liaison with appropriate agencies and the Long Term Care Ombudsman.

(c) Report, in writing, monthly to the Long Term Care Ombudsman.

(d) Keep residents and long term care staff informed of the Long Term Care Ombudsman Program.

(e) Periodically review the Patients' Bill of Rights with residents, families, guardians, administrators and staff.

(f) Perform other related duties as specified. [1981 c.534 §10; 1985 c.153 §4]

441.133 Effect of ORS 441.100 to 441.153 on right to visitors. Nothing in ORS 441.100 to 441.153 shall affect the right of residents of a long term care facility to see visitors of their choice. [1981 c.534 §11]

441.135 [Amended by 1955 c.464 §5; 1965 c.308 §4; 1971 c.730 §20; repealed by 1977 c.751 §39]

441.137 Long Term Care Advisory Committee; appointment; confirmation; term; qualifications. (1) There is established a Long Term Care Advisory Committee of seven members to be appointed in the following manner:

(a) One person appointed by the Speaker of the House of Representatives;

(b) One person appointed by the President of the Senate;

(c) One person appointed by the House Minority Leader;

(d) One person appointed by the Senate Minority Leader;

(e) Two persons, from a list of four names submitted by the organizations of seniors, appointed by the Governor; and

(f) One person appointed by the Governor.

(2) All members are subject to confirmation by the Senate under ORS 171.562 and 171.565.

(3) The term of office of each member is four years. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(4) The members of the committee must be citizens of this state who are broadly representative to the extent possible of persons over 55 years of age, including disabled persons and members of racial and ethnic minorities, who have knowledge and interest in the problems of the elderly and are representative of all areas of the state. At least five members shall be at least 60 years of age. [1985 c.153 §6; 1989 c.224 §93]

441.140 [Amended by 1955 c.464 §6; 1971 c.730 §21; 1977 c.751 §31; renumbered 442.350]

441.142 Duties. The Long Term Care Advisory Committee shall:

(1) Monitor the Long Term Care Ombudsman Program.

(2) Advise the Governor and the Legislative Assembly on the Long Term Care Ombudsman Program.

(3) Nominate, after interviews and according to prescribed criteria, three persons to fill the office of Long Term Care Ombudsman. [1985 c.153 §11]

441.145 [Amended by 1955 c.464 §7; 1965 c.308 §5; 1965 c.439 §5; 1971 c.730 §22; repealed by 1977 c.751 §39]

441.146 Appeal to Long Term Care Advisory Committee. (1) A long term care facility that files a complaint against a designee appointed under ORS 441.131 and objects to the action of the Long Term Care Ombudsman in resolving the complaint may appeal the ombudsman's action to a panel of the Long Term Care Advisory Committee.

(2) The committee on its own motion may review any action by the ombudsman

appealable under this section. The review shall provide an opportunity for written and oral presentation by the long term care facility and the ombudsman. The committee shall issue its findings and any instructions to the ombudsman in written form consistent with the federal Older Americans Act.

(3) If the committee disagrees with the action of the ombudsman, the committee may refer the resolution back to the ombudsman with instructions consistent with the federal Older Americans Act to conform the ombudsman's action in the matter to the recommendations of the committee. [1995 c.789 §1]

Note: 441.146 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.147 Officers; quorum; meetings; expenses. (1) The Long Term Care Advisory Committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the committee determines.

(2) A majority of the members of the committee constitutes a quorum for the transaction of business. Decisions may be made by a majority of the quorum.

(3) The committee shall meet at least once each month at a place, day and hour determined by the committee. The committee also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the committee. The committee shall confer each month with the Long Term Care Ombudsman.

(4) A member of the Long Term Care Advisory Committee is entitled to compensation and expenses as provided in ORS 292.495. [1985 c.153 §§8,9,10]

441.150 [Amended by 1971 c.730 §23; repealed by 1977 c.751 §39]

441.153 Long Term Care Ombudsman Account. The Long Term Care Ombudsman Account is established separate and distinct from the General Fund. All miscellaneous receipts, gifts and federal and other grants received by the Long Term Care Ombudsman shall be deposited into the Long Term Care Ombudsman Account and are continuously appropriated to the Long Term Care Ombudsman for carrying out the responsibilities of the Long Term Care Ombudsman. [1985 c.153 §14 (3); 2001 c.716 §29]

HOSPITAL NURSING SERVICES

441.160 Definition for ORS 441.162 to 441.170. As used in ORS 441.162 to 441.170, "hospital" includes a hospital as described in ORS 442.015 and an acute inpatient care facility as defined in ORS 442.470. [2001 c.609 §1]

Note: 441.160 to 441.192 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.162 Written staffing plan for nursing services. (1) A hospital shall be responsible for the implementation of a written hospital-wide staffing plan for nursing services. The staffing plan shall be developed, monitored, evaluated and modified by a hospital staffing plan committee. To the extent possible, the committee shall:

(a) Include equal numbers of hospital nurse managers and direct care registered nurses;

(b) Include at least one direct care registered nurse from each hospital nurse specialty or unit, to be selected by direct care registered nurses from the particular specialty or unit. The hospital shall define its own specialties or units; and

(c) Have as its primary consideration the provision of safe patient care and an adequate nursing staff pursuant to ORS chapter 441.

(2) The hospital shall evaluate and monitor the staffing plan for effectiveness and revise the staffing plan as necessary as part of the hospital's quality assurance process. The hospital shall maintain written documentation of these quality assurance activities.

(3) The written staffing plan shall:

(a) Be based on an accurate description of individual and aggregate patient needs and requirements for nursing care and include a periodic quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time.

(b) Be based on the specialized qualifications and competencies of the nursing staff. The skill mix and the competency of the staff shall ensure that the nursing care needs of the patients are met and shall ensure patient safety.

(c) Be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations and recognize differences in patient acuteness.

(d) Establish minimum numbers of nursing staff including licensed practical nurses and certified nursing assistants required on specified shifts. At least one registered nurse

and one other nursing staff member must be on duty in a unit when a patient is present.

(e) Include a formal process for evaluating and initiating limitations on admission or diversion of patients to another acute care facility when, in the judgment of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients.

(4) The hospital shall maintain and post a list of on-call nursing staff or staffing agencies to provide replacement for nursing staff in the event of vacancies. The list of on-call nurses or agencies must be sufficient to provide replacement staff.

(5)(a) An employer may not impose upon unionized nursing staff any changes in wages, hours or other terms and conditions of employment pursuant to a staffing plan developed or modified under subsection (1) of this section unless the employer first provides notice to and, on request, bargains with the union as the exclusive collective bargaining representative of the nursing staff in the bargaining unit.

(b) A staffing plan developed or modified under subsection (1) of this section does not create, preempt or modify a collective bargaining agreement or require a union or employer to bargain over the staffing plan while a collective bargaining agreement is in effect. [2001 c.609 §2; 2005 c.665 §2]

Note: See note under 441.160.

441.164 Variances in staffing plan requirements. Upon request of a hospital, the Department of Human Services may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital. [2001 c.609 §3]

Note: See note under 441.160.

441.166 Need for replacement staff. (1) When a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse or certified nursing assistant to work overtime.

(2) A hospital may not require a registered nurse, licensed practical nurse or certified nursing assistant to work:

(a) Beyond the agreed-upon shift;

(b) More than 48 hours in any hospital-defined work week; or

(c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require an additional hour of work beyond the 12 hours if:

(A) A staff vacancy for the next shift becomes known at the end of the current shift; or

(B) There is a potential harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(3)(a) Time spent in required meetings or receiving education or training shall be included as hours worked for purposes of subsection (2) of this section.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (2) of this section.

(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer shall be included as hours worked for purposes of subsection (2) of this section.

(4) The provisions of this section do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan;

(b) In emergency circumstances identified by the Department of Human Services by rule; or

(c) If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in ORS 441.162 and is unable to obtain replacement staff in a timely manner. [2001 c.609 §4; 2005 c.665 §1]

Note: See note under 441.160.

441.168 Leaving a patient care assignment. A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift or an agreed upon extended shift without authorization from the appropriate supervisory personnel. [2001 c.609 §5]

Note: See note under 441.160.

441.170 Civil penalties; suspension or revocation of license; rules; compliance audits. (1) The Department of Human Services may impose civil penalties in the manner provided in ORS 183.745 or suspend or revoke a license of a hospital for a violation of any provision of ORS 441.162 or 441.166. The department shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for any violation of ORS 441.162 or 441.166 when there is a reasonable belief that safe patient care has been or may be negatively impacted. A civil penalty imposed under this subsection may not exceed $5,000. Each violation of a nursing staff plan shall be considered a separate vio-

lation. Any license that is suspended or revoked under this subsection shall be suspended or revoked as provided in ORS 441.030.

(2) The department shall maintain for public inspection records of any civil penalties or license suspensions or revocations imposed on hospitals penalized under subsection (1) of this section.

(3) The department shall conduct an annual random audit of not less than seven percent of all hospitals in this state solely to verify compliance with the requirements of ORS 441.162, 441.166 and 441.192. Surveys made by private accrediting organizations may not be used in lieu of the audit required under this subsection. The department shall compile and maintain for public inspection an annual report of the audit conducted under this subsection.

(4) The costs of the audit required under subsection (3) of this section may be paid out of funds from licensing fees paid by hospitals under ORS 441.020. [2001 c.609 §6]

Note: See note under 441.160.

441.172 Definitions for ORS 441.172 to 441.182. As used in ORS 441.172 to 441.182:

(1) "Affiliated hospital" means a hospital that has a business relationship with another hospital.

(2) "Hospital" means:

(a) An acute inpatient care facility, as defined in ORS 442.470; or

(b) A hospital as described in ORS 442.015.

(3) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174 (2).

(4) "Nursing staff" means a registered nurse, a licensed practical nurse, a nursing assistant or any other assistive nursing personnel.

(5) "Public body" has the meaning given that term in ORS 30.260.

(6) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff, or other adverse action taken against a nursing staff in the terms or conditions of employment of the nursing staff, as a result of filing a complaint. [2001 c.609 §9]

Note: See note under 441.160.

441.174 Retaliation prohibited. (1) A hospital may not take retaliatory action against a nursing staff because the nursing staff:

(a) Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(2) Except as provided in subsection (3) of this section, the protection against retaliatory action in subsection (1) of this section does not apply to a nursing staff, unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in subsection (1)(a) of this section:

(a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and

(b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.

(3) A nursing staff is not required to comply with the provisions of subsection (2) of this section if the nursing staff:

(a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;

(b) Reasonably fears physical harm as a result of the disclosure; or

(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime. [2001 c.609 §10]

Note: See note under 441.160.

441.176 Remedies for retaliation. (1) A nursing staff aggrieved by an act prohibited by ORS 441.174 may bring an action in circuit court of the county in which the hospital is located. All remedies available in a common law tort action are available to a nursing staff if the nursing staff prevails in an action brought under this subsection and are in addition to any remedies provided in subsection (2) of this section.

(2) In an action brought under subsection (1) of this section, a circuit court may do any of the following:

(a) Issue a temporary restraining order or a preliminary or permanent injunction to restrain a continued violation of ORS 441.174.

(b) Reinstate the nursing staff to the same or equivalent position that the nursing staff held before the retaliatory action.

(c) Reinstate full benefits and seniority rights to the nursing staff as if the nursing staff had continued in employment.

(d) Compensate the nursing staff for lost wages, benefits and other remuneration, including interest, as if the nursing staff had continued in employment.

(e) Order the hospital to pay reasonable litigation costs of the nursing staff, including reasonable expert witness fees and reasonable attorney fees.

(f) Award punitive damages as provided in ORS 31.730.

(3) Except as provided in subsection (4) of this section, in any action brought by a nursing staff under subsection (1) of this section, if the court finds that the nursing staff had no objectively reasonable basis for asserting the claim, the court may award costs, expert witness fees and reasonable attorney fees to the hospital.

(4) A nursing staff may not be assessed costs or fees under subsection (3) of this section if, upon exercising reasonable and diligent efforts after filing the action, the nursing staff moves to dismiss the action against the hospital after determining that no issue of law or fact exists that supports the action against the hospital. [2001 c.609 §11]

Note: See note under 441.160.

441.178 Unlawful employment practices; civil action for retaliation. (1) A hospital that takes any retaliatory action described in ORS 441.174 against a nursing staff commits an unlawful employment practice.

(2) A nursing staff claiming to be aggrieved by an alleged violation of ORS 441.174 may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. Except for the provisions of ORS 659A.870, 659A.875, 659A.880 and 659A.885, violation of ORS 441.174 is subject to enforcement under ORS chapter 659A.

(3) Except as provided in subsection (4) of this section, a civil action under ORS 441.176 must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(4) The nursing staff who has filed a complaint under ORS 659A.820 must commence a civil action under ORS 441.176 within 90 days after a 90-day notice is mailed to the nursing staff under this section.

(5) The commissioner shall issue a 90-day notice to the nursing staff:

(a) If the commissioner dismisses the complaint within one year after the filing of the complaint and the dismissal is for any reason other than the fact that a civil action has been filed.

(b) On or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under paragraph (a) of this subsection or the matter has been resolved by the execution of a settlement agreement.

(6) A 90-day notice under this section must be in writing and must notify the nursing staff that a civil action against the hospital under ORS 441.176 may be filed within 90 days after the date of mailing of the 90-day notice and that any right to bring a civil action against the hospital under ORS 441.176 will be lost if the action is not commenced within 90 days after the date of mailing of the 90-day notice.

(7) The remedies under this section and ORS 441.176 are supplemental and not mutually exclusive. [2001 c.609 §12; 2001 c.609 §12a]

Note: See note under 441.160.

441.180 Hospital posting of notice. (1) A hospital shall post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178 and 441.192 in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed $500. Civil penalties under this section shall be imposed by the Department of Human Services in the manner provided by ORS 183.745. [2001 c.609 §13]

Note: See note under 441.160.

441.182 Rights, privileges or remedies of nursing staff. (1) Except as provided in subsection (2) of this section, nothing in ORS 441.176 and 441.178 shall be deemed to diminish any rights, privileges or remedies of a nursing staff under federal or state law or regulation or under any collective bargaining agreement or employment contract.

(2) ORS 441.176 and 441.178 provide the only remedies under state law for a nursing staff for an alleged violation of ORS 441.174 committed by a hospital. [2001 c.609 §14]

Note: See note under 441.160.

441.192 Notice of employment outside of hospital. (1) A hospital, as defined in ORS 441.172, may require a registered nurse who is receiving full employment benefits from the hospital to provide notice of any outside employment that may reasonably impede the ability of the nurse to fulfill the nurse's obligation to the hospital in providing nursing services to patients under the hospital's care.

(2) If a hospital determines that the outside employment causes a risk to patients receiving services in the hospital, the hospital may require the nurse to discontinue the outside employment.

(3) A hospital may not unreasonably restrict the outside employment of nurses and may restrict outside employment only if the hospital provides in writing to the nurse an explanation of the hospital's documentation that the outside employment creates a risk to patients in the hospital. A nurse who does not discontinue outside employment if required by the hospital may be disciplined or terminated from employment by the hospital.

(4) A nurse who does not provide notice as required by a hospital pursuant to this section may be disciplined or terminated from employment by the hospital if the failure to provide notice creates a risk to a patient in the hospital. [2001 c.609 §18]

Note: See note under 441.160.

441.195 [1957 s.s. c.13 §1; renumbered 440.305]

441.200 [1951 s.s. c.13 §2; renumbered 440.310]

441.205 [Amended by 1969 c.343 §1; renumbered 440.315]

441.210 [Amended by 1969 c.343 §2; 1971 c.727 §114; renumbered 440.320]

441.215 [Repealed by 1957 s.s. c.13 §4 (441.216 enacted in lieu of 441.215)]

441.216 [1957 s.s. c.13 §5 (enacted in lieu of 441.215); 1969 c.343 §3; repealed by 1971 c.727 §203]

441.220 [Amended by 1969 c.343 §4; repealed by 1971 c.727 §203]

441.225 [Repealed by 1971 c.727 §203]

441.227 [1965 c.403 §2; 1969 c.343 §5; repealed by 1971 c.727 §203]

441.230 [Amended by 1965 c.403 §3; 1969 c.343 §6; repealed by 1971 c.727 §203]

441.235 [Amended by 1969 c.343 §7; repealed by 1971 c.647 §149 and 1971 c.727 §203]

441.240 [Amended by 1959 c.69 §1; repealed by 1971 c.647 §149]

441.245 [Repealed by 1957 s.s. c.13 §8]

441.250 [Repealed by 1971 c.647 §149]

441.255 [Repealed by 1971 c.647 §149 and 1971 c.727 §203]

441.260 [Amended by 1969 c.343 §8; repealed by 1971 c.727 §203]

441.265 [Repealed by 1971 c.647 §149 and 1971 c.727 §203]

441.270 [Amended by 1969 c.343 §9; repealed by 1971 c.727 §203]

441.275 [Amended by 1969 c.343 §10; repealed by 1971 c.727 §203]

TRUSTEE TO ENSURE COMPLIANCE WITH CARE RULES

441.277 Definitions for ORS 441.277 to 441.323. As used in ORS 441.277 to 441.323:

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

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

(3) "Facility" means a long term care facility as defined in ORS 442.015 or a residential care facility as defined in ORS 443.400. Facilities licensed under ORS 418.205 to 418.325 by the department are exempt from ORS 441.277 to 441.323.

(4) "Monitor" means an agent of the director designated by the director to observe the operation of a facility. [1981 c.868 §1; 1987 c.428 §17; 1987 c.548 §5; 2001 c.900 §173; 2003 c.14 §254]

441.280 [Amended by 1969 c.343 §11; 1971 c.727 §117; renumbered 440.325]

441.281 Petition for appointment of trustee; hearing; order. (1) The Director of Human Services may petition the circuit court for the county in which a facility is located for an order appointing a trustee to administer the facility for a period not to exceed 18 months.

(2) The court shall hold a hearing on a petition filed under subsection (1) of this section within 10 days of the filing of the petition. The petition shall be placed at the head of the docket.

(3) The petition and notice of the hearing shall be served on the person or body legally responsible for the facility. Service at the facility to the individual in charge shall be considered service on the owner.

(4) If the court determines at the hearing that grounds exist for the appointment of a trustee under ORS 441.286, the court shall enter the order. [1981 c.868 §2; 1985 c.648 §1; 1987 c.428 §18]

441.285 [Amended by 1969 c.343 §12; repealed by 1969 c.343 §28; amended by 1969 c.669 §8; 1973 c.796 §61; renumbered 440.330]

441.286 Grounds for appointment of trustee. The grounds for the appointment of a trustee shall be that the health and welfare of patients in a facility are now or in the immediate future will be in jeopardy based on:

(1) Sufficient prior surveys or investigations of complaints resulting in the determination that the complaints are supported by findings, and evidence that the Department of Human Services has attempted by findings of survey deficiencies and imposition of civil penalties to bring the long term care facility into compliance with statute and rules.

(2) No improvement in patient care, health and welfare over a seven-day period after the survey or investigation as defined by:

(a) Physicians' orders not being followed correctly.

(b) The lack of, or inadequate direct patient care to the point that the patient has or is suffering physical harm.

(c) Deficient staffing to the point of causing physical or mental harm to the patient.

(d) Physical injury to a patient of a long term care facility which has been determined by the department to be caused by other than accidental means and for which the administrator has not taken necessary action.

(3) The person or body legally responsible is unwilling or unable, or both, to upgrade the quality of patient care to the level necessary to protect the health and welfare of the patients.

(4) The facility is insolvent.

(5) The department has revoked or suspended the license of the facility.

(6) The operator intends to close the facility and has not made adequate arrangements for relocation of the residents.

(7) The facility refuses to allow the monitors access to the facility. [1981 c.868 §3; 1985 c.648 §2; 1987 c.428 §19]

441.289 Powers and duties of trustee. A trustee appointed under ORS 441.286:

(1) May exercise any powers and shall perform any duties required by the court.

(2) Shall operate the facility in such a manner as to protect the health and welfare of the patients.

(3) Shall have the same rights to possession of the building in which the facility is located and of all goods and fixtures in the building at the time the petition for the appointment of the trustee is filed as the person or body legally responsible would have had if the trustee had not been appointed.

(4) Shall take such action as is reasonably necessary to protect and conserve the assets and property the trustee takes in possession, or the proceeds of any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(5) May receive and spend the facility's income and encumber its assets to the extent specifically authorized by the court and do all acts necessary or appropriate to promote the health and safety of the residents.

(6) Shall have the power to maintain an action to reach the assets of the parent corporation if it appears to the court that the parent corporation is the actual controlling owner of the facility and that the named owner is not in control of the facility.

(7) May use the building, fixtures, furnishings and any accompanying consumable goods in the provision of care and services to patients at the time the petition for the appointment of the trustee was filed.

(8) Shall collect payments for all goods and services provided to patients during the period of the trust, at the same rate of payment charged by the facility at the time the petition for the appointment of the trustee was filed, unless a different rate is set by the court.

(9) May correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the health or welfare of the patients while they remain in the facility. However, the total cost of correction shall not exceed $3,000 unless the court orders expenditures for this purpose in excess of $3,000 upon application by the trustee.

(10) May make contracts and hire agents and employees to assist the trustee in carrying out the powers and duties described in this section, subject to approval by the court.

(11) Except as provided in ORS 441.296, shall honor all leases, mortgages and secured transactions governing the building in which this facility is located and all goods and fixtures in the building of which the trustee has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the trust, or which, in

the case of a purchase agreement, come due during the period of the trust.

(12) May direct, manage and discharge employees of the facility, subject to any contract rights they may have.

(13) Shall pay employees at the same rate of compensation, including benefits, that the employees would have received from the owner, operator or other controlling person, except the trustee shall compensate employees only for time actually worked during the period of the trust and shall not be responsible for reimbursement for vacations or periods of sick leave. However, in no case shall a trustee compensate any employee of a facility in an amount which is less than the minimum amount required by law.

(14) Shall be entitled to take possession of all property or assets belonging to patients which are in the possession of the long term care facility.

(15) Shall preserve and protect all property, assets and records of patients of which the trustee takes possession.

(16) Shall, if the facility ceases to operate during the period of the trust and any patient is transferred as a result thereof, ensure that:

(a) Transportation of the patient, the patient's belongings and the medical record to the new location is provided.

(b) Aid for locating alternative placements is available to the patient or the patient's legal representative.

(c) Each patient is physically and mentally prepared for transfer to avoid possible trauma due to the transfer.

(d) Each patient or the patient's legal representative is permitted to participate in the selection of the new placement.

(17) Is an agent of the state for purposes of ORS 30.260 to 30.300 for which the Department of Human Services shall be assessed and the department may use the account established under ORS 441.303 to pay the assessment. [1981 c.868 §4; 1985 c.731 §28; 1987 c.428 §20; 1997 c.249 §140]

441.290 [Renumbered 440.335]

441.293 Liability to trustee for goods and services after notice; effect of nonpayment. (1) A person who is served with notice of an order of the court appointing a trustee, with the trustee's name and address, shall be liable to pay the trustee for any goods or services provided by the trustee after the date of the order if the person would have been liable for the goods or services as supplied by the person or body legally responsible for the facility. The trustee shall give a receipt for each payment and shall keep a copy of each receipt on file. The trustee shall deposit amounts received in a special account and may use this or any other similar account for disbursements.

(2) The trustee may bring an action to enforce the liability created by subsection (1) of this section. Proof of payment to the trustee is as effective in favor of the person making the payment as payment of the amount to the person who would have been entitled to receive the sum so paid.

(3) A patient shall not be discharged, nor shall any contract or rights be forfeited or impaired, nor shall forfeiture or liability be increased, by reason of an omission to pay a person or body legally responsible for the facility a sum paid to the trustee. [1981 c.868 §5]

441.295 [Amended by 1969 c.343 §§13,27; 1969 c.344 §6; 1971 c.403 §7; renumbered 440.340]

441.296 Liability for rent or contracts. (1) A trustee is not required to honor any lease, mortgage, secured transaction or other wholly or partially executory contract entered into by the person or body legally responsible for the facility if in the judgment of the court the terms thereof are unconscionable.

(2) If the trustee is in possession of real estate or goods subject to a lease, mortgage or security interest which the trustee is permitted to avoid under subsection (1) of this section, and if the real estate or goods are necessary for the continued operation of the facility, the trustee may apply to the court to set a reasonable rental. The court shall hold a hearing on the application within 15 days. The trustee shall send notice of the application to any known owners of the property involved at least 10 days prior to the hearing. Payment by the trustee of the amount determined by the court to be reasonable is a defense to any action against the trustee for payment or for possession of the goods or real estate subject to the lease or mortgage involved by any person who received such notice. However, the payment does not relieve the person or body legally responsible for the facility of any liability for the difference between the amount paid by the trustee and the amount due under the original lease or mortgage involved. [1981 c.868 §6]

441.300 [Amended by 1969 c.343 §14; repealed by 1969 c.343 §29 and 1969 c.345 §20]

441.301 Payment of expenses when income inadequate. If funds collected under ORS 441.289 and 441.293 are insufficient to meet the expenses of performing the powers and duties conferred on the trustee by ORS 441.277 to 441.323, or if there are insufficient funds on hand to meet those expenses, the Department of Human Services may draw from the supplemental funds created under ORS 441.303 to pay those expenses. Operat-

ing funds collected under this section and not applied to the expenses of the trust shall be used to reimburse the fund for advances made under this section. [1981 c.868 §7]

441.303 Fees from facilities in addition to license fee; use of fees. (1) To establish and maintain a fund to meet expenses of a trustee if moneys collected under ORS 441.289 and 441.293 are insufficient, the Department of Human Services shall require a payment equal to the equivalent of the annual license fee for the facility. The payment shall be due annually on a date fixed by the department and enforced in the same manner as the license fee for the particular facility is payable and enforceable. The amount of payments shall be set so as to acquire in the account the $300,000 described in subsection (3) of this section at the end of six years from the initial payment year.

(2) Funds collected under this section and, notwithstanding ORS 293.140, all interest earned on cash balances thereof invested by the State Treasurer shall be maintained as a fund in the State Treasury, separate and distinct from the General Fund, and are continuously appropriated to the department to pay the expenses of the trust.

(3) Whenever the fund established under this section reaches $300,000, the department shall discontinue collecting the payment described in subsection (1) of this section. However, whenever the fund falls below $300,000, the department shall reinstitute the payment described in subsection (1) of this section until the fund is restored to $300,000. If the amount collected would raise more than required, the department shall prorate the payment of each facility so as to raise no more than required. The department may use reasonable amounts from the fund necessary to administer the fund.

(4) Whenever the department is required to use any amount in the fund to operate a facility under ORS 441.289 and 441.293, the amount used shall constitute a loan to the facility and shall be repayable to the fund under such terms and conditions as the facility and the department agree. The rate of interest shall be set by the department to reflect the prevailing market rate on similar loans. The interest shall be credited to the separate fund described in subsection (2) of this section.

(5) The assessment imposed under this section shall be considered an allowable cost in setting the reimbursement rates of a facility by the department.

(6) The court may order that the trustee file an undertaking with the clerk of the court. The fund collected under this section may serve as surety for the undertaking. [1981 c.868 §7a; 1983 c.787 §1; 1987 c.428 §21; 1989 c.966 §49; 2003 c.14 §255]

441.305 [Amended by 1969 c.343 §15; 1971 c.647 §79; renumbered 440.350]

441.306 Compensation of trustee. The court shall set the compensation of the trustee. That compensation and the compensation of the employees shall be considered a necessary expense of the trust. [1981 c.868 §8]

441.307 [1957 s.s. c.13 §7; 1969 c.343 §16; repealed by 1971 c.647 §149]

441.308 [Repealed by 1957 s.s. c.13 §8]

441.309 Trustee as public employee. (1) In any action or special proceeding brought against a trustee in the trustee's official capacity for acts committed while carrying out the powers granted and duties imposed by ORS 441.277 to 441.323, the trustee shall be considered a public employee.

(2) A trustee may be held liable in a personal capacity only for the trustee's own gross negligence, intentional acts or breach of fiduciary duty. [1981 c.868 §9]

441.310 [Amended by 1959 c.616 §1; 1969 c.343 §17; repealed by 1971 c.647 §149]

441.312 License renewal of facility placed in trust. Notwithstanding other provisions of law concerning licensing of long term care facilities, a license renewal may be issued to a facility placed in trust under ORS 441.286. The duration of a license issued under this section is limited to the duration of the trust. [1981 c.868 §10]

441.315 [Amended by 1971 c.647 §80; renumbered 440.355]

441.316 Termination of trust; extension; license revocation. (1) The court may terminate a trust if the time period specified in the order appointing the trustee lapses or if the patients in the facility have been provided with care in another facility or upon petition of the person or body legally responsible for the facility if the person or body legally responsible intends to discontinue the operation of or close the facility during the period of the trust. The court may use its discretion in terminating a trust upon petition of the person or body legally responsible for the facility to determine whether discontinuance or closure will promote the health and safety of the patients.

(2) At the expiration of the period for which the trustee was appointed, the court shall make a determination as to the future of the facility based upon evidence presented to the court. At that time the court may decide to:

(a) Order the Department of Human Services to issue a new license to the owners, body or person legally responsible for the facility and permit the facility to continue in operation;

(b) Extend the period of appointment of the trustee by not more than 90 days; or

(c) Order the department without further administrative hearing to revoke the license of the facility.

(3) Nothing in ORS 441.277 to 441.323 is intended to limit or prohibit any person or body legally responsible for the facility from ceasing the operation of and closing a facility during the period of the trust. However, the person or body legally responsible intending to do so shall give written notice of the intended action of the trustee pursuant to rules of the department. The trustee may continue to operate the facility for a period of not more than 60 days after notice is received. The person or body legally responsible shall be liable for any expenses incurred in the operation of the facility during this period. [1981 c.868 §11; 1987 c.428 §22]

441.318 Trustee accounting; lien. (1) Within 60 days following the creation of the trust by the court, and every 60 days thereafter, and within 30 days after the termination of the trust, the trustee shall give the court and the Department of Human Services a complete accounting of all property of which the trustee has taken possession, all funds collected under ORS 441.289 and 441.293 and all expenses incurred by the trust. The trustee shall prepare a report and file it with the court and the department making recommendations concerning the current condition of the facility and projections for future operation of the facility and the conditions of the health and welfare of the patients.

(2) If the operating funds collected by the trustee under ORS 441.289 and 441.293 exceed the reasonable expenses of the trust, the court shall order payment of the surplus to the person or body legally responsible after reimbursement to the department of funds contributed under ORS 441.303. If the operating funds are insufficient to cover the reasonable expenses of the trust, the person or body legally responsible for the facility shall be liable for the deficiency. The person or body legally responsible for the facility may apply to the court to determine the reasonableness of any expense incurred by the trust. The person or body responsible for the facility shall not be responsible for expenses in excess of what the court finds to be reasonable. Payment recovered from the person or body legally responsible for the facility shall be credited to reimburse the account for funds contributed by the department under ORS 441.303.

(3) The department shall have a lien for any deficiency under subsection (2) of this section upon any beneficial interest, direct or indirect, of any person or body legally responsible for the facility operation, of any person or body legally responsible for the building in which the facility is located or the land on which the facility is located and any fixtures, equipment or goods used in the operation of the facility and the proceeds from any conveyance of such property made by the person or body legally responsible within one year prior to the filing of the petition for appointment of a trustee.

(4) The lien provided in subsection (3) of this section is prior to any lien or other interest which originates subsequent to the filing of a petition for appointment of a trustee under ORS 441.286, except for a construction lien arising out of work performed with the express consent of the trustee. [1981 c.868 §12; 1987 c.428 §23]

441.320 [Amended by 1967 c.37 §1; 1967 c.353 §1; 1971 c.89 §1; 1971 c.727 §118; renumbered 440.360]

441.323 Effect of trust on prior obligations or civil or criminal liabilities. (1) Nothing in ORS 441.277 to 441.323 is intended:

(a) To relieve any person or body legally responsible for the facility placed in trust of any civil or criminal liability incurred, or any duty imposed by law by reason of acts or omissions of the person or body legally responsible prior to the appointment of a trustee under ORS 441.286.

(b) To suspend any obligation of the person or body legally responsible for payment of taxes or other operating and maintenance expenses of the facility or payment of mortgages or other liens during the term of the trust.

(2) No person or body legally responsible shall be held professionally liable for acts or omissions of the trustee or the trustee's employees during the term of the trust. [1981 c.868 §13]

441.325 [Renumbered 440.365]

441.330 [Renumbered 440.370]

441.335 [Amended by 1963 c.9 §25; 1969 c.343 §18; renumbered 440.375]

441.340 [Repealed by 1971 c.647 §149]

441.345 [Amended by 1969 c.2 §1; 1969 c.343 §19; 1969 c.694 §7; 1971 c.36 §4; renumbered 440.380]

441.350 [Amended by 1969 c.343 §20; renumbered 440.385]

441.355 [Renumbered 440.390]

MOVES FROM LONG TERM CARE FACILITIES

441.357 Definitions for ORS 441.357 to 441.367. As used in ORS 441.357 to 441.367:

(1) "Informed written consent" means voluntary consent in writing given after receipt and understanding of a written statement of a resident's rights under ORS 441.362 (1) to (5).

(2) "Long term care facility" means any long term care facility as defined in ORS 442.015.

(3) "Move from a long term care facility" means any move, relocation, discharge or transfer out of a long term care facility which terminates residence at the long term care facility.

(4) "Resident" means an individual receiving care in a long term care facility. [1983 c.269 §1; 1985 c.747 §51]

441.360 [Amended by 1963 c.9 §26; 1969 c.694 §8; renumbered 440.395]

441.362 Notice by Department of Human Services prior to move or termination; hearing; consent to move; who may consent. (1) The Department of Human Services shall not move any resident from a long term care facility or terminate payment for a resident of a long term care facility without providing 30 days' written notice to the resident of the reasons for the move or termination of payment, the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for contesting the move or termination of payment.

(2) Written notice in accordance with this section shall be provided by the department in all moves, including situations where the resident requests or initiates the move.

(3) The request for hearing must be made to the department within 10 days of the service or delivery of the written notice to move.

(4) Notwithstanding subsection (1) of this section, the department may move a resident less than 30 days after the service of the notice if the resident gives informed written consent to the move or termination of payment.

(5) In the event the resident is cognitively impaired, informed written consent can only be given by a guardian, conservator, person holding a general power of attorney, person designated by the resident to receive notice of a move or termination of payment or person who requested the receipt of notice of a move or termination of payment. [1983 c.269 §2]

441.365 [Amended by 1961 c.396 §1; 1969 c.343 §20a; 1969 c.694 §9; 1971 c.36 §5; 1973 c.284 §3; renumbered 440.400]

441.367 Facility required to give notice of base rate and policy on nonpayment; rules; notice of changes; civil penalty. (1) The Department of Human Services by rule shall require long term care facilities licensed under ORS 441.020 to provide written and oral notice before or at the time of admission to any resident who does not receive medical assistance under ORS chapter 414, specifying:

(a) The base daily rate and any additional expenses reasonably to be expected including medical supplies, pharmacy and doctor visits and the charges for incontinency care, feeding and laundry; and

(b) The long term care facility's policy regarding residents who become unable to pay facility charges by reason of exhaustion of all income and resources to or below the level of eligibility for medical assistance.

(2) A long term care facility shall give 30 days' notice in writing to all residents of changes in additional expenses or charges.

(3) The Director of Human Services may impose a civil penalty for violation of subsection (1) of this section under ORS 441.710 (1)(b). [1983 c.269 §§3,4,5; 1987 c.428 §24]

441.370 [Amended by 1969 c.343 §21; renumbered 440.405]

441.375 [Amended by 1973 c.284 §4; renumbered 440.410]

441.380 [Amended by 1969 c.343 §22; repealed by 1971 c.727 §203]

441.385 [Amended by 1969 c.343 §23; repealed by 1971 c.727 §203]

441.390 [Amended by 1969 c.343 §24; repealed by 1971 c.727 §203]

441.395 [Subsection (2) enacted as 1957 c.584 §1; repealed by 1969 c.343 §30]

441.400 [Amended by 1969 c.343 §25; repealed by 1971 c.727 §203]

441.405 [Amended by 1969 c.343 §26; repealed by 1971 c.727 §203]

441.410 [Repealed by 1971 c.727 §203]

441.415 [1973 c.837 §2; 1977 c.751 §40; renumbered 442.400]

441.420 [1973 c.837 §1; 1977 c.751 §41; renumbered 442.405]

441.425 [1973 c.837 §3; repealed by 1977 c.751 §57]

441.430 [1973 c.837 §4; repealed by 1977 c.751 §57]

441.435 [1973 c.837 §6; 1977 c.751 §42; renumbered 442.420]

441.440 [1973 c.837 §7; renumbered 442.425]

441.445 [1973 c.837 §8; renumbered 442.430]

441.460 [1973 c.837 §9; 1977 c.751 §43; renumbered 442.435]

441.465 [1973 c.837 §10; renumbered 442.440]

441.470 [1973 c.837 §11; repealed by 1977 c.751 §57]

441.475 [1973 c.837 §5; repealed by 1977 c.751 §57]

441.480 [1973 c.837 §12; renumbered 442.445]

441.505 [Subsection (2) enacted as 1957 c.584 §2; 1967 c.498 §5; renumbered 440.505]

441.510 [Renumbered 441.810]

441.515 [1971 c.166 §1; renumbered 441.815]

FINANCING OF HEALTH CARE FACILITIES CONSTRUCTION

441.525 Definitions for ORS 441.525 to 441.595. As used in ORS 441.525 to 441.595, unless the context requires otherwise:

(1) "Adult congregate living facility" means any institution, building or buildings, residential facility for elderly and disabled persons, or other place, operated as a nonprofit corporation which undertakes through its ownership or management to provide housing, meals and the availability of other supportive services.

(2) "Authority" means any public authority organized or existing pursuant to ORS 441.525 to 441.595.

(3) "Governing body" means the county court, board of county commissioners, council or other legislative body of any municipality.

(4) "Hospital facility" means any structure, system, machinery, equipment or other real or personal property useful for or incidental to inpatient or outpatient care or administration, service or support for such care or any combination thereof which is provided by a political subdivision of this state or any private nonprofit corporation, which is operating or proposes to operate an adult congregate living facility, or a health care facility as defined by ORS 442.015.

(5) "Municipality" means any health district, city or county and further means any municipal corporation resulting from a city-county or city consolidation or a merger of cities. [1973 c.153 §2; 1981 c.161 §1; 1983 c.740 §157; 1989 c.224 §94]

441.530 Policy. In order to provide the people of Oregon with access to adequate medical care and hospital facilities, the Legislative Assembly finds that it is necessary and desirable to authorize the creation in the several counties and cities of public authorities having the power to acquire, own, lease, sell and otherwise dispose of hospital facilities, and to authorize municipalities which create authorities to utilize those authorities to issue bonds and other obligations on behalf of such municipalities in order that the municipalities may provide hospital facilities. [1973 c.153 §1; 1977 c.201 §2]

441.532 Municipalities authorized to create authority; issuance of obligations; conditions; purpose of authority. Only a municipality may create an authority. Such a municipality may utilize an authority to issue obligations on behalf of the municipality in order to provide hospital facilities for the people of the municipality. No authority shall issue obligations on behalf of more than one municipality. An authority shall not be created or continued in existence for any purpose other than to provide hospital facilities as provided in ORS 441.525 to 441.595. [1977 c.201 §3]

441.535 Procedure to create public authority. (1) A governing body may upon its own motion, and shall upon the written request of any three or more natural persons, consider whether it is advisable to create a public authority for the purpose of providing hospital facilities.

(2) If the governing body, after public hearing according to its rules, determines that it is wise and desirable to create in a public authority the power and duties set forth in ORS 441.525 to 441.595, it shall by ordinance or resolution establish such an authority. The ordinance or resolution shall set forth:

(a) The name of the authority, which shall be "The Hospital Facility Authority of (Municipality), Oregon" or other similar distinctive name.

(b) The number of directors of the authority, which shall not be less than five nor more than 11.

(c) The names of the initial directors and their terms of service, which shall not exceed six years. At least one director shall also be a member of the governing body. Such director shall serve only so long as the director is a member of the governing body and, in any event, no longer than six years.

(d) Such other provisions as may be appropriate and not inconsistent with ORS 441.525 to 441.595 or the laws of Oregon.

(3) Upon the adoption of such an ordinance or resolution, the authority shall be deemed established as a municipal corporation of this state and as a body corporate and politic exercising public powers.

(4) An authority so organized shall have all the powers and duties contained in ORS 441.525 to 441.595. The governing body, at its sole discretion and at any time, may alter or change the structure, organization, programs or activities of the authority, subject to any limitations imposed by law on the impairment of contracts. The governing body may dissolve the authority at any time, provided the authority has no bonds or other obligations outstanding. [1973 c.153 §3; 1977 c.201 §4]

441.540 Board of directors; appointment; expenses; rules; quorum; personnel. (1) An authority shall be managed and controlled by a board of directors, who shall be appointed by the governing body. The directors may be removed for cause or at the will of the governing body. The directors shall serve without compensation. However, the authority may reimburse the directors for their expenses incurred in the performance of their duties.

(2) The board of directors shall adopt and may amend rules for calling and conducting its meetings and carrying out its business and may adopt an official seal. All decisions of the board shall be by motion or resolution and shall be recorded in the board's minute book which shall be a public record. A majority of the board shall constitute a quorum for the transaction of business and a majority thereof shall be sufficient for the passage of any such motion or resolution.

(3) The board may employ such employees and agents as it deems appropriate and provide for their compensation. [1973 c.153 §4; 1977 c.201 §5]

441.545 Authority not to levy taxes. An authority shall not have the right or power to levy taxes or to operate a hospital facility. [1973 c.153 §5]

441.550 General powers. Except as otherwise provided in ORS 441.545, an authority shall have all powers necessary to accomplish the purpose of providing hospital facilities for the people of Oregon, including without limitation the power:

(1) To sue and be sued in its own name.

(2) To acquire by purchase, construction, exchange, gift, lease, or otherwise, and to improve, extend, maintain, equip and furnish hospital facilities, which hospital facilities may be either within or without the corporate limits of the municipality by which the authority is created.

(3) To lease such hospital facilities to any one or more political subdivisions of this state or any private nonprofit corporations which are operating or propose to operate an inpatient care facility subject to the licensing and supervision requirements of ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 upon such terms and conditions as the board deems appropriate, to charge and collect rents and to terminate any such lease upon default of the lessee.

(4) To enter into options and agreements for the renewal or extension of such leases of hospital facilities or for the conveyance of such hospital facilities.

(5) To sell, exchange, donate and convey any or all of its hospital facilities or other assets.

(6) To borrow money and to issue notes and revenue bonds for the purpose of carrying out its powers.

(7) To mortgage and pledge its assets, or any portion thereof, whether then owned or thereafter acquired, to pledge the revenues and receipts from such assets, to acquire, hold, and dispose of mortgages and other similar documents relating to hospital facilities, and to arrange and provide for guarantee and other security agreements therefor.

(8) To loan money for the construction of and improvements to hospital facilities.

(9) To enter into contracts, leases and other undertakings in its own name.

(10) To adopt and amend ordinances and resolutions. [1973 c.153 §6; 1983 c.413 §1]

441.555 Issuance of revenue obligations; nature of obligation; refunding. (1) To accomplish its purposes, an authority shall have the power to issue revenue obligations payable from the revenues derived by it from repayment of loans or from its ownership or sale of any one or more hospital facilities. The issuance of such revenue obligations shall be governed by the provisions of subsections (2) to (8) of this section, and shall not be subject to the prior approval of the electors of the municipality.

(2) The authority shall issue revenue obligations only by bond resolution duly adopted by its board of directors. The bond resolution shall specify the public purposes for which the proceeds of the revenue obligations shall be expended, declare the estimated cost of carrying out such purposes, contain such covenants, and provide for the issuance and sale of revenue obligations in such form and amount as the directors determine. In declaring such cost, the directors may include the funds necessary for working capital during construction, reserves, interest during construction, the payment of organizational, planning, financing and legal expenses, the repayment of advances and the start-up costs. The bond resolution may provide that hospital facilities subsequently acquired or constructed by the authority shall be deemed betterments or additions to, or extensions of, the specified hospital facility, whether or not physically connected.

(3) The bond resolution shall provide for the establishment of one or more special funds, and such funds may be under the control of the board or one or more trustees. The bond resolution shall obligate the authority to deposit and expend the proceeds of the revenue obligations only into and from such fund or funds, and to set aside and pay into such fund or funds any fixed proportion or fixed amount of the revenues derived by it from any or all of its hospital facilities or other corporate activities, as the board finds in the best interest of the authority and the payment of its obligations. The authority may issue and sell revenue obligations payable as to interest and principal only out of such fund or funds.

(4) Any revenue obligations issued against any fund or funds provided for in subsection (3) of this section shall be a valid

claim of the holder thereof only as against such special fund or funds, the proportion or amount of the revenues pledged to such fund or funds and such assets as the authority may have pledged. Each such revenue obligation shall state on its face that it is payable from a special fund or funds, naming the fund or funds and the resolution creating it or them.

(5) Any pledge of revenues or other moneys or obligations or assets made by an authority shall be valid and binding from the time that the pledge is made against any parties having subsequent claims of any kind in tort, contract, or otherwise against an authority, irrespective of whether such parties have actual notice thereof. The pledge shall be noted in the authority's minute book which shall be constructive notice thereof to all parties and neither the resolution nor other instrument by which a pledge is created need be otherwise recorded, nor shall the filing of any financing statement under the Uniform Commercial Code be required to perfect such pledge. Revenues or other moneys or obligations or assets so pledged and later received by an authority shall immediately be subject to the lien of the pledge without any physical delivery or further act.

(6) The revenue obligations issued under the provisions of subsections (1) to (5) of this section shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered or both, carry such registration privileges, be made transferable, exchangeable and interchangeable, be payable in such medium, at such place or places, contain such covenants, and be subject to such terms of redemption as the board of directors shall declare in the bond resolution.

(7) Notwithstanding any other provision of law, the revenue obligations issued by an authority may be sold by the board of directors upon such terms and conditions and at such rate or rates of interest and for such price or prices as it may deem most advantageous to the authority, with or without public bidding. The authority may make contracts for future sale from time to time of revenue obligations by which the contract purchasers shall be committed to the prices, terms and conditions stated in such contract, and the board of directors may pay such consideration as it deems proper for such commitments.

(8) The board of directors may provide by resolution for the issuance of funding and refunding revenue obligations in order to take up and refund any one or more series, or portion of a series, of outstanding revenue obligations at such time or times as it may determine. Such refunding revenue obligations may be sold or exchanged at par or otherwise as the board of directors determines is in the best interest of the authority.

(9) All revenue obligations issued pursuant to this section shall be legal securities which may be used by any insured institution or trust company, as those terms are defined in ORS 706.008, for deposit with the State Treasurer or a county treasurer or city treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys and shall constitute legal investments for public bodies, trustees and other fiduciaries, banks, savings and loan associations, and insurance companies. All such revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the law of this state. [1973 c.153 §7; 1983 c.413 §2; 1997 c.631 §471]

441.560 Borrowing; bond anticipation notes. An authority may borrow from banks or other lenders such sums on such terms as the board of directors deems necessary or advisable. An authority may also issue, sell and assume bond anticipation notes or their equivalent, which shall bear such date or dates, mature at such time or times, be in such denominations and in such form, be payable in such medium, at such place or places, and be subject to such terms of redemption, as the board deems necessary or advisable. [1973 c.153 §8]

441.565 Obligations of authority not obligations of municipality. The revenue bonds and other obligations of an authority shall not be a general obligation of the municipality nor a charge upon the tax revenues of the municipality. [1973 c.153 §9]

441.570 Payment of principal and interest. The board of directors shall establish rentals, selling prices, and other charges at least adequate to pay the principal of and interest on the obligations of the authority as the same become due, including payments to any special fund or funds, together with the financing and other costs of the authority. [1973 c.153 §10]

441.575 Authorities may act jointly. All powers and responsibilities provided in ORS 441.525 to 441.595 may be exercised and discharged by two or more authorities acting jointly to effectuate the purposes of ORS 441.525 to 441.595. [1973 c.153 §11]

441.580 Authority as public body; tax status of assets, income and bonds. An authority is hereby declared to be a public body performing a public function. Accordingly, an authority, all assets at any time owned by it, the income therefrom, and all bonds issued by an authority, together with the coupons applicable thereto, and the in-

come therefrom, shall be exempt from all taxation in the State of Oregon; provided, however, that real and personal property owned by the authority and leased to a third party shall be subject to property taxation if such property would be subject to taxation if owned by the lessee thereof. All bonds issued by an authority shall be deemed to be securities issued by a political subdivision of the State of Oregon. [1973 c.153 §12]

441.585 Disposition of excess earnings; disposition of assets on dissolution. The earnings of the authority in excess of the amount required for the retirement of indebtedness or the accomplishment of the purposes stated in ORS 441.525 to 441.595 shall not inure to the benefit of any person or body other than the municipality creating the authority. Upon dissolution of an authority, any assets remaining after provision for payment of the obligations and expenses of the authority shall become the assets of the municipality. [1973 c.153 §13; 1977 c.201 §6]

441.590 Authority granted by ORS 441.525 to 441.595. ORS 441.525 to 441.595 are complete authority for the organization of authorities and for the issuance and sale of revenue bonds and refunding revenue bonds. Any restrictions, limitations, conditions or procedures provided by other statutes, including but not limited to the provisions of ORS chapter 198 and ORS 440.305 to 440.410, do not apply to the organization of authorities and the issuance and sale of revenue bonds pursuant to ORS 441.525 to 441.595. However, nothing contained in ORS 441.525 to 441.595 shall be construed as a restriction or limitation upon any powers which an authority might otherwise have under any law of this state or the charter of any municipality. [1973 c.153 §14; 2005 c.443 §25]

441.595 Construction of ORS 441.525 to 441.595. ORS 441.525 to 441.595 shall be liberally construed to effect its purposes. In the event that any portion of ORS 441.525 to 441.595 is declared invalid or otherwise unenforceable by a court of record, the remaining provisions of ORS 441.525 to 441.595 shall nevertheless remain in full force and effect. [1973 c.153 §15]

LONG TERM CARE FACILITIES

(Nursing Home Patients′ Bill of Rights)

441.600 Definitions for ORS 441.600 to 441.625. As used in ORS 441.600 to 441.625 unless the context requires otherwise:

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

(2) "Facility" means a long term care facility as defined in ORS 442.015.

(3) "Legal representative" means attorney at law, person holding a general power of attorney, guardian, conservator or any person appointed by a court to manage the personal or financial affairs of a resident or person or agency legally responsible for the welfare or support of a resident.

(4) "Person" means an individual and every form of organization, whether incorporated or unincorporated, including partnership, corporation, trust, association or administrative agency or political subdivision of this state.

(5) "Resident" means an individual under care in a facility. [1979 c.261 §2; 1987 c.428 §25]

441.605 Legislative declaration of rights intended for residents. It is the intent of the Legislative Assembly that facilities guarantee at a minimum that each resident has the right to be:

(1) Fully informed of all resident rights and all facility rules governing resident conduct and responsibilities.

(2) Fully informed which services are available and of any additional charges not covered by the daily rates or by Medicare or Medicaid.

(3) Informed by a physician of the medical condition of the resident unless medically contraindicated in the medical record, and given the opportunity to participate in planning medical treatment and to refuse experimental research.

(4) Transferred or discharged only for medical reasons, or for the welfare of the resident or of other residents of the facility, or for nonpayment and to be given reasonable advance notice to insure orderly transfer or discharge.

(5) Encouraged and assisted while in the facility to exercise rights as a citizen, and to voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination or reprisal.

(6) Allowed either to manage personal finances or be given a quarterly report of account if the facility has been delegated in writing to carry out this responsibility.

(7) Free from mental and physical abuse and assured that no chemical or physical restraints will be used except on order of a physician.

(8) Assured that medical and personal records are kept confidential and unless the resident transferred, or examination of the records is required by the third party payment contractor, are not released outside the facility. However, nothing in this subsection is intended to prevent a resident from au-

thorizing access to the resident's medical and personal records by another person.

(9) Treated with respect and dignity and assured complete privacy during treatment and when receiving personal care.

(10) Assured that the resident will not be required to perform services for the facility that are not for therapeutic purposes as identified in the plan of care for the resident.

(11) Allowed to associate and communicate privately with persons of the resident's choice and send and receive personal mail unopened unless medically contraindicated by the attending physician in the medical record of the resident.

(12) Allowed to participate in activities of social, religious and community groups at the discretion of the resident unless medically contraindicated.

(13) Able to keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights and unless medically contraindicated and upon the resident's request and the facility management's consent have access to a private locker, chest or chest drawer that is provided by the resident or the facility that is large enough to accommodate jewelry and small personal property and that can be locked by the resident although both the resident and the facility management may have keys.

(14) Provided, if married, with privacy for visits by the resident's spouse. If both spouses are residents in the facility, they are permitted to share a room.

(15) Not required to sign a contract or waiver that waives the resident's right to collect payment for lost or stolen articles. [1979 c.261 §4; 1981 c.326 §1; 1987 c.397 §1]

441.610 Nursing home patients' bill of rights; adoption; standards. (1) The Department of Human Services shall adopt a nursing home patients' bill of rights consistent with the principles set forth in ORS 441.605. The rules shall be applicable to all residents and as far as practicable shall conform to any federal nursing home patients' bill of rights.

(2) The department shall periodically review the rules to assure that they meet the principles set forth in ORS 441.605 and that they are in conformity with federal standards but in no case shall the rules be less protective than required by ORS 441.605.

(3) The department shall be guided by federal interpretative standards in its enforcement of the nursing home patients' bill of rights. [1979 c.261 §5; 1987 c.397 §2]

441.615 Powers and responsibilities of department; rules. In the administration of ORS 441.600 to 441.625, 441.710 and 441.715, the Department of Human Services shall have the following powers and responsibilities:

(1) To inspect any facility and the records of any facility to insure compliance with ORS 441.600 to 441.625, 441.710 and 441.715.

(2) To adopt rules in accordance with ORS chapter 183, including but not limited to procedures for investigations and administrative hearings.

(3) To file complaints and initiate proceedings for the enforcement of ORS 441.600 to 441.625, 441.710 and 441.715 or of rules adopted under ORS 441.600 to 441.625, 441.710 and 441.715.

(4) To issue subpoenas. [1979 c.261 §3]

441.620 Disclosure of business information required. Each facility shall disclose to the resident in writing its legal name and business address, and the name and business address of the administrator of the facility, at the time of admission of a resident. Information required to be disclosed by this section shall be kept current. [1979 c.261 §6]

(Enforcement of Nursing Home Laws)

441.623 [1987 c.428 §1; repealed by 2001 c.900 §261]

441.624 Purpose. (1) ORS 124.050, 124.080, 410.190, 441.020 to 441.057, 441.060, 441.061, 441.067, 441.073, 441.085, 441.087, 441.277 to 441.289, 441.303, 441.316, 441.318, 441.367, 441.600, 441.610, 441.630, 441.650 to 441.665, 441.685, 441.690, 441.703 and 441.705 to 441.720 address the consolidation of the regulatory functions of licensing, certification, inspection of care, utilization review, abuse reporting and abuse investigation.

(2) It is legislative intent that:

(a) The Department of Human Services focus administrative effort on the integration and consistent application and interpretation of the regulatory functions at the nursing facility level;

(b) Surveys and other reports, especially with respect to client assessment, be consistently and reliably performed throughout the state;

(c) Positive and negative findings and sanctions be proportional to the strengths and problems identified, within the limits of federal statute and regulations; and

(d) The interpretation of regulatory criteria be independent of influence from budgetary limitations. [1987 c.428 §1a; 2001 c.900 §229]

Note: 441.624 was enacted into law by the Legislative Assembly but was not added to or made a part of

ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.625 Retaliation against resident exercising rights prohibited. No facility, or any person subject to the supervision, direction or control of a facility, shall retaliate against a resident by increasing charges, decreasing services, rights or privileges, or threatening to increase charges or decrease services, rights or privileges, by taking or threatening any action to coerce or compel the resident to leave the facility, or by abusing or threatening to harass or to abuse a resident in any manner, after the resident or the resident's legal representative has engaged in exercising rights given under ORS 441.605 or under rules of the Department of Human Services under ORS 441.610. [1979 c.261 §7]

(Resident Abuse)

441.630 Definitions for ORS 441.630 to 441.680 and 441.995. As used in ORS 441.630 to 441.680 and 441.995:

(1) "Abuse" means:

(a) Any physical injury to a resident of a long term care facility which has been caused by other than accidental means.

(b) Failure to provide basic care or services, which failure results in physical harm or unreasonable discomfort or serious loss of human dignity.

(c) Sexual contact with a resident caused by an employee, agent or other resident of a long term care facility by force, threat, duress or coercion.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another person.

(e) Verbal or mental abuse as prohibited by federal law.

(f) Corporal punishment.

(g) Involuntary seclusion for convenience or discipline.

(2) "Abuse complaint" means any oral or written communication to the department, one of its agents or a law enforcement agency alleging abuse.

(3) "Department" means the Department of Human Services or a designee of the department.

(4) "Facility" means a long term care facility, as defined in ORS 442.015.

(5) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(6) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Licensed practical nurse or registered nurse.

(c) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities programs or a long term care facility or person who contracts to provide services to a long term care facility.

(d) Peace officer.

(e) Member of the clergy.

(f) Licensed clinical social worker.

(g) Physical, speech and occupational therapists.

(h) Legal counsel for a resident or guardian or family member of the resident. [1979 c.770 §1; 1981 c.470 §7; 1981 c.784 §22; 1987 c.428 §26; 1989 c.721 §53; 1993 c.759 §1; 2001 c.104 §180]

441.635 Legislative finding. The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of residents and assuring the dignity and care to which residents are entitled, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused residents. [1979 c.770 §2; 1993 c.759 §2]

441.637 Rules; submission of rules to advisory group. (1) The Department of Human Services shall implement the provisions of ORS 441.630 to 441.680 and 441.995 and shall adopt such rules as are reasonably necessary for the enforcement of ORS 441.630 to 441.680 and 441.995.

(2) Prior to proceeding with the procedures for notice prescribed under ORS 183.335, the department shall submit any proposed rules to an advisory group consisting of representatives of long term care providers, long term care advocates, relevant licensing boards and the department. The department shall consider and respond to the comments of the advisory group that pertain to any proposed rules before the department adopts the rules. [1993 c.759 §10(1),(2)]

Note: 441.637, 441.676, 441.677, 441.678, 441.679 and 441.995 were added to and made a part of 441.630 to 441.680 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

441.640 Report of suspected abuse of resident required. Any public or private official having reasonable cause to believe that any resident in a long term care facility, with whom the official comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in

an official capacity has abused a resident in a long term care facility, shall report or cause a report to be made in the manner required in ORS 441.645. [1979 c.770 §3; 1993 c.759 §3]

441.645 Oral report to area agency on aging, department or law enforcement agency. (1) An oral report shall be made immediately by telephone or otherwise to the local office of the area agency on aging or of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the resident and any persons responsible for the care of the resident, the nature and the extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report is received by the area agency or department, the area agency or the department may notify the law enforcement agency having jurisdiction within the county where the report was made. When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not and the local office of the area agency or the department in the county where the report was made. [1979 c.770 §4; 1985 c.651 §4; 1993 c.759 §4]

441.650 Investigation of abuse complaint; initial status report; content; distribution of report; duties of investigator; investigation report. (1) Upon receipt of the oral or written report required under ORS 441.640, or of an abuse complaint, the area agency on aging, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced as follows:

(a) Within two hours, if the complaint alleges that a resident's health or safety is in imminent danger or that the resident has recently died, been hospitalized or been treated in an emergency room; or

(b) Prior to the end of the next working day, if the complaint alleges that circumstances exist that could result in abuse and that the circumstances could place a resident's health or safety in imminent danger.

(2) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify in writing the local office of the area agency or the department as appropriate. Except in cases where the investigation is part of nursing facility surveyor activity pursuant to federal law, the area agency or the department shall complete an initial status report within two working days of the start of the investigation that includes:

(a) A summary of the complaint that identifies each alleged incident or problem;

(b) The status of the investigation;

(c) Whether an abuse complaint was initially filed at the direction of the administration of the facility;

(d) A determination of whether protection of the resident is needed and whether the facility must take action;

(e) The name and telephone number of the investigator; and

(f) The projected date that the investigation report will be completed and a statement that the report will be available upon request after the department issues a letter of determination.

(3) The initial status report described in subsection (2) of this section shall be provided either in person or by mail to the following individuals as soon as practicable, but no later than two working days after its completion:

(a) The complainant, unless the complainant waives the requirement;

(b) If the complaint involves a specific resident, the resident or a person designated to receive information concerning the resident;

(c) A representative of the Long Term Care Ombudsman, upon request; and

(d) The long term care facility.

(4) The initial status report described in subsection (2) of this section shall be available for public inspection.

(5) When copies of the initial status report described in subsection (2) of this section are made available to individuals listed in subsection (3) of this section, the names of the resident involved, the complainant and any individuals interviewed by the investigator shall be deleted from the copies.

(6) In investigating an abuse complaint, the investigator shall:

(a) Make an unannounced visit to the facility, except as provided by ORS 441.690, to determine the nature and cause of the abuse of the resident;

(b) Interview all available witnesses identified by any source as having personal knowledge relevant to the abuse complaint, such interviews to be private unless the witness expressly requests the interview not to be private;

(c) Make personal inspection of all physical circumstances that are relevant and ma-

terial and that are susceptible to objective observation; and

(d) Write an investigation report that includes:

(A) The investigator's personal observations;

(B) A review of documents and records;

(C) A summary of all witness statements; and

(D) A statement of the factual basis for the findings for each incident or problem alleged in the complaint.

(7) Within five working days of completion of the investigation and not later than 60 days from completion of the initial status report described in subsection (2) of this section, the investigator shall provide the department with the written report required by subsection (6) of this section. The department shall make the investigation report available upon request after the letter of determination is complete. When copies of the report are made available, the names of the resident involved, the complainant and any individuals interviewed by the investigator shall be deleted from the copies. [1979 c.770 §5; 1987 c.428 §29; 1993 c.759 §5]

441.655 Immunity provided reporter of abuse. (1) Anyone participating in good faith in the making of a report pursuant to ORS 441.630 to 441.650 and who has reasonable grounds for the making thereof, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

(2) Anyone who makes a report pursuant to ORS 441.630 to 441.650 shall not be subjected to any retaliation by any official or employee of a long term care facility for making a report, including but not limited to restriction of otherwise lawful access to the facility or to any resident thereof, or, if an employee, to dismissal or harassment. [1979 c.770 §6]

441.660 Photographing resident; photograph as record. (1) In carrying out its duties under ORS 441.650, the law enforcement agency, the Department of Human Services or the area agency on aging may photograph or cause to have photographed any resident subject of the investigation for purposes of preserving evidence of the condition of the resident at the time of the investigation.

(2) Notwithstanding the provisions of ORS 192.410 to 192.505, photographs taken under authority of subsection (1) of this section shall not be considered records. [1979 c.770 §7; 1981 c.470 §6; 1987 c.428 §30; 1993 c.759 §8; 2005 c.268 §1]

441.665 Record of reports; classification of investigation report. (1) A proper record of reports under ORS 441.640, 441.645 and 441.676 on residents in long term care facilities shall be maintained by the Department of Human Services. Each problem or incident alleged in a report shall be determined to be abuse, other licensing violation or no violation. Each incident of abuse or other licensing violation alleged in a report shall be classified as substantiated, unsubstantiated or unable to substantiate or recorded as under appeal by the facility.

(2) All reports shall be catalogued under the name of the long term care facility associated with the complaint. [1979 c.770 §8; 1987 c.428 §31; 1993 c.759 §9]

441.670 [1979 c.770 §9; repealed by 1981 c.470 §1 (441.671 enacted in lieu of 441.670)]

441.671 Confidentiality of reports; when available. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of complainants and residents compiled under the provisions of ORS 441.640 to 441.660 are confidential and are not accessible for public inspection. However, the Department of Human Services shall make the information available to any law enforcement agency, to any public agency which licenses or certifies long term care facilities or licenses or certifies the persons practicing the healing arts therein and to the Long Term Care Ombudsman.

(2) Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.505 apply to all records and reports compiled under ORS 441.640 to 441.665. [1981 c.470 §2 (enacted in lieu of 441.670); 1993 c.759 §11]

441.675 Certain evidentiary privileges inapplicable. In the case of abuse of a resident in a long term care facility, the privileges extended under ORS 40.225 to 40.295 shall not be a ground for excluding evidence regarding the abuse of a resident, or the cause thereof, in any judicial proceeding resulting from a report made pursuant to ORS 441.640. [1979 c.770 §10; 1983 c.740 §158; 1993 c.759 §12]

441.676 Investigation of licensing violations; powers of investigator. (1) For complaints of licensing violations other than abuse, the Department of Human Services shall cause an investigation to be completed within 90 days of the receipt of the complaint.

(2) Except in cases where the investigation is part of nursing facility surveyor activity pursuant to federal law, an investigator investigating a complaint other than a complaint of abuse shall:

(a) Make an unannounced visit to the facility, while complying with ORS 441.690;

(b) Interview all available witnesses identified by any source as having personal knowledge relevant to the complaint, such interviews to be private unless the witness expressly requests the interview not to be private;

(c) Make personal inspection of all physical circumstances that are relevant and material and that are susceptible to objective observation; and

(d) Write an investigation report that includes:

(A) The investigator's personal observations;

(B) A review of documents and records;

(C) A summary of all witness statements; and

(D) A statement of the factual basis for the findings for each incident or problem alleged in the complaint. [1993 c.759 §6]

Note: See note under 441.637.

441.677 Letter of determination; determination rules; distribution of letter; notice to nursing assistant. (1) Within 60 days of receipt of the investigation documents and the written report described in ORS 441.650 (6)(d) and 441.676 (2)(d), the Department of Human Services shall prepare a written letter of determination that states the department's determinations concerning each incident or problem alleged in the complaint. The department shall determine whether the alleged incident or problem was substantiated or unsubstantiated or whether the department was unable to substantiate the alleged incident or problem. The department shall adopt by rule definitions for the terms "substantiated," "unsubstantiated" and "unable to substantiate." If the department determines that an incident or problem alleged in the complaint is substantiated, the letter of determination shall state whether the substantiated incident was abuse or violation of another rule. If abuse is substantiated, the letter of determination shall state whether the facility or an individual, or both, was responsible. The department shall adopt by rule criteria for determining responsibility for substantiated abuse.

(2) A copy of the letter of determination shall be placed in the facility's complaint file. Copies shall be sent to the facility, the complainant and the local office of the department. The facility and the complainant receiving the letter of determination shall be given 10 days to respond with additional information and shall be informed of the appeals process.

(3) If the department determines that an individual who holds a license or certificate for a health occupation is directly responsible for the abuse, the department shall send a copy of its letter of determination and investigation report to the state agency responsible for licensing or certifying the individual in the health occupation. In instances involving conduct of a nursing assistant, the department shall give the nursing assistant 10 days to respond with additional information. The department also shall notify by mail the nursing assistant implicated in the investigation of:

(a) The nature of the allegations;

(b) The date and time of occurrence;

(c) The right to an administrative review under ORS 441.678;

(d) The department's intent to report the substantiated findings to the registry maintained under ORS 678.150 after the nursing assistant has had an opportunity for administrative review; and

(e) The fact that the nursing assistant's failure to request an administrative review within 30 days from the date of the notice will result in the department's reporting the substantiated findings to the registry maintained under ORS 678.150.

(4) Notice sent to the nursing assistant's last-known address is sufficient to meet the requirements of subsection (3) of this section. [1993 c.759 §7]

Note: See note under 441.637.

441.678 Review of finding that nursing assistant responsible for abuse; name placed in registry. (1) If a nursing assistant found by the Department of Human Services to be responsible for abuse does not respond to the department within 30 days after notice of the opportunity for an administrative review, the department shall notify the Oregon State Board of Nursing, which shall place the abuse finding in the registry maintained under ORS 678.150.

(2) If a nursing assistant is found to be responsible for abuse, neglect or misappropriation of a resident's funds, the nursing assistant is entitled to an administrative review under subsection (3) of this section. If, after the review, the nursing assistant is found responsible, the department shall notify the Oregon State Board of Nursing of its finding, which shall place the finding in the registry maintained under ORS 678.150.

(3) The administrative review shall be conducted by a panel of three persons, consisting of one person from the department's management staff who is responsible for the monitoring of nursing homes, one person who is a registered nurse and who is on the staff of the Oregon State Board of Nursing

and one person who is on the staff of the department but not directly involved in the monitoring of nursing homes and who has expertise in areas related to nursing care in a facility. [1993 c.759 §16; 2001 c.900 §174]

Note: See note under 441.637.

441.679 Preemployment inquiries; when employment prohibited. (1) Before employing a registered nurse, licensed practical nurse or nursing assistant, a long term care facility shall contact the Oregon State Board of Nursing and inquire whether the person is currently licensed or certified by the board and whether there has been any disciplinary action against the person or substantiated abuse findings against a nursing assistant.

(2) A facility shall not employ or retain in employment any person found responsible in an administrative procedure that is not appealed or in a court of law for abusing, neglecting or mistreating a person receiving long term care services, nor shall a facility employ or retain in employment any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150. [1993 c.759 §15]

Note: See note under 441.637.

441.680 Spiritual healing alone not considered abuse of resident. A resident who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered an abused resident within the meaning of ORS 441.630 to 441.680 and 441.995. [1979 c.770 §11; 1993 c.759 §13]

441.685 Monitors; designation; duties; peer review of facilities. (1) Upon receipt of a report under ORS 441.645 to 441.680 or upon receipt of a complaint by a resident or legal guardian of a resident, or other public or private official, as defined in ORS 441.630 by the Department of Human Services, the Director of Human Services may designate monitors who shall observe the activities of the facility and report to the director. The monitors may be designated without prior notice to the operator or owner of the facility. The monitors shall observe the operations of the facility for a period of not to exceed 10 days, assist the facility by advising it on how to comply with state requirements and shall submit a written report periodically to the director on the operation and condition of the facility.

(2) The monitors shall have access to the facilities to the extent necessary to carry out their duties. The monitors shall also have access to all records pertaining to the operation of the facility.

(3) Upon completion of their investigations, the monitors shall file a final report with the director and may:

(a) Find that problems in the facility have been resolved and recommend that further action by the department is unnecessary;

(b) Find that the problems in the facility are continuing but the facility owner, operator or other controlling person can resolve them within a period of not more than three months, and that during the three-month period the health and welfare of the residents of the facility are not jeopardized thereby; or

(c) Find that the problems of the facility have not been resolved and the department should take steps to obtain compliance with resident care standards and continue monitoring for an additional period.

(4) Associations representing long term care facilities may initiate a peer review process for any facility that is a member of the association and that is the subject of any complaint filed against it under ORS 441.630 to 441.685, 678.037 and 678.155 or any other provision of law. The report of the peer review process shall be submitted to the department. The peer review described in this subsection is in addition to and not in lieu of any other investigation, observation or report of the monitors otherwise required or authorized by ORS 441.630 to 441.685, 678.037 and 678.155. The association and persons conducting the peer review process acting in good faith shall not be subject to an action for civil damages as a result thereof.

(5) As used in this section:

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

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

(c) "Facility" means a long term care facility as defined in ORS 442.015.

(d) "Monitor" means an agent of the director designated by the director to observe the operation of a facility. [1979 c.770 §§12,13; 1987 c.428 §32; 1993 c.759 §14; 2001 c.900 §175]

(Investigation of Complaints)

441.690 Complainant may accompany investigator. Upon the request of any person filing a complaint to be investigated by the Department of Human Services against a long term care facility, as defined in ORS 442.015, or against a residential care facility, as defined in ORS 443.400, the complainant or a designee thereof, or both, shall be allowed to accompany an investigator to the

site of the alleged violation. [1981 c.241 §1; 1987 c.428 §33; 1987 c.548 §6; 2001 c.900 §176]

441.695 Conduct of investigation. In investigating all complaints under ORS 441.690, the investigator shall:

(1) Interview all available witnesses identified by any sources as having personal knowledge relevant to the complaint;

(2) Make personal inspection of all physical circumstances that are relevant and material to the complaint and which are susceptible of objective observation;

(3) Not decline to interview a witness or consider the testimony of the witness solely because the witness is neither a health care professional nor an employee of the facility; and

(4) Write a report which includes:

(a) The investigator's personal observations;

(b) A review of documents and records;

(c) A summary of all witness statements; and

(d) A statement of the basis for the finding. [1981 c.241 §2]

(Drug Supplies for Unscheduled Leaves)

441.697 Prescribed drug supply for unscheduled therapeutic leave from long term care facility; dispensing of drugs by registered nurse. (1) When a resident of a long term care facility has the opportunity for an unscheduled therapeutic leave that would be precluded by the lack of an available pharmacist to dispense drugs prescribed by a licensed practitioner, a registered nurse designated by the facility who agrees to such designation may provide the resident or a responsible person with up to a 72-hour supply of a prescribed drug or drugs for use during that leave from the resident's previously dispensed package of such drugs.

(2) The drugs shall only be provided in accordance with protocols developed by the pharmaceutical services committee of the long term facility and the protocol shall be available for inspection. These protocols shall include the following:

(a) Criteria as to what constitutes an unscheduled therapeutic leave requiring the provision of drugs by the registered nurse or consultant or staff pharmacist;

(b) Procedures for repackaging and labeling the limited supply of previously dispensed drugs by the designated registered nurse that comply with all state and federal laws concerning the packaging and labeling of drugs;

(c) Provision to assure that none of the medication provided to the resident or responsible person may be returned to the resident's previously dispensed package of such drug or to the facility's stock; and

(d) A record-keeping mechanism that provides for the maintenance of a permanent log that includes the following information:

(A) The name of the person to whom the drug was provided;

(B) The drug and quantity provided;

(C) The date and time that the request for the drug was made;

(D) The date and time that the drug was provided;

(E) The name of the registered nurse who provided the drug; and

(F) The conditions or circumstances that precluded a pharmacist from providing the drug. [1987 c.205 §1]

Note: 441.697 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Access)

441.700 Access to facilities by persons providing services. (1) Long term care facilities, as defined in ORS 442.015, and residential care facilities, as defined in ORS 443.400, subject to ORS 441.605 (11), shall permit individuals and representatives of community service organizations, including community legal services programs, whose purpose is rendering service without charge to residents, to have full and free access to the facility during reasonable visiting hours to:

(a) Visit, talk with and make personal, social and legal services available to all residents.

(b) Inform residents of their rights and entitlements, and their corresponding obligations, under federal and state laws by means of distribution of educational materials and discussion in groups and with individual residents.

(c) Assist residents in asserting their rights regarding claims for public assistance, medical assistance and Social Security benefits and other rights. Assistance may be provided individually, as well as on a group basis.

(d) Engage in all other methods of assisting, advising and representing residents so as to extend to them the full enjoyment of their rights.

(2) A resident retains the right to refuse contact by any individual or group having access to the facility under this section.

(3) As used in this section, "full and free access" means access to the fullest extent

possible without undue adverse interference on the operation of the facility. [1981 c.99 §1; 1987 c.548 §7]

(Complaint File)

441.703 Complaint file; summary; availability on request. (1) Except as provided in subsection (2) of this section, the Department of Human Services shall maintain a listing of all long term care facilities, as defined in ORS 442.015, by name and address and for each indicating:

(a) The complaint file number.

(b) The category of the complaint, whether staffing, food, patient care or other.

(c) A brief description of the complaint.

(d) The department's finding.

(e) Action taken by the department.

(f) Fines assessed, if any.

(g) Fines paid, if any.

(2) The department shall maintain a separate listing of all complaints it considers unsupported by findings indicating the information required by subsection (1)(a) to (d) of this section.

(3) The information described in subsections (1) and (2) of this section shall be noted in summary form on annual cover sheets for the file on a particular facility. The cover sheets shall not contain any of the information made confidential under ORS 441.671. Copies of the cover sheets shall be made available to the public at cost on request. Upon such request, the department shall provide only copies of the cover sheets described in subsection (1) of this section unless the information described in subsection (2) of this section is specifically requested.

(4) The listing maintained pursuant to subsection (1) of this section shall contain the following notice:

NOTICE: This cover sheet does not contain information on complaints that the Department of Human Services considers unsupported by findings or on complaints still under investigation by the department. The department will make information regarding such complaints available upon request.

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(5) The department shall provide a written explanation summarizing the complaint system with each copy of a cover sheet provided under subsection (3) of this section. [1981 c.721 §1; 1987 c.428 §34]

441.704 [1983 c.484 §1; repealed by 1985 c.647 §3]

CIVIL PENALTIES

441.705 Definitions for ORS 441.705 to 441.745. As used in ORS 441.705 to 441.745:

(1) "Direct patient care or feeding" means any care provided directly to or for any patient related to that patient's physical, medical and dietary well-being as defined by rules of the Department of Human Services.

(2) "Person" means a licensee under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463, or a person whom the Director of Human Services finds should be so licensed but is not, but does not include any employee of such licensee or person.

(3) "Staff to patient ratio" means the number and training of persons providing direct patient care as defined in rules of the department. [1975 c.328 §9; 1977 c.261 §7; 1987 c.428 §35; 2001 c.900 §177; 2003 c.14 §256]

Note: 441.705 to 441.745 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.710 Civil penalties; when imposed. (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 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 for a long term care facility, as defined in ORS 442.015.

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

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

(d) Violation of ORS 441.605 or of rules required to be adopted under ORS 441.610.

(e) Violation of ORS 443.880 or 443.881.

(2) A civil penalty may not be imposed under this section for violations other than those involving direct patient care or feeding, an adequate staff to patient ratio, sanitation involving direct patient care or a violation of ORS 441.605 or 443.880 or 443.881 or of the rules required to be adopted by ORS 441.610 unless a violation is found on two consecutive surveys of the long term care facility. The director in every case shall prescribe a reasonable time for elimination of a violation:

(a) Not to exceed 30 days after first notice of a violation; or

(b) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director. [1975 c.328 §1; 1977 c.261 §8; 1979 c.261 §8; 1983 c.740 §159; 1987 c.428 §36; 1991 c.413 §4]

Note: See note under 441.705.

441.712 Notice of civil penalty. (1) Any civil penalty under ORS 441.710 shall be imposed in the manner provided by 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. [1977 c.261 §6; 1987 c.428 §37; 1991 c.734 §23; 2003 c.14 §257]

Note: See note under 441.705.

441.715 Objective criteria for civil penalties; rules. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under ORS 441.710. However, the civil penalty may not exceed $500 for each violation, except as otherwise provided in ORS 441.637 and 441.995.

(b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed $500 per day.

(2) The penalties assessed under subsection (1) of this section shall not exceed $6,000 in the aggregate or as otherwise required by federal law with respect to a single long term care facility within any 90-day period. [1975 c.328 §2; 1977 c.261 §9; 1979 c.261 §9; 1987 c.428 §38; 1993 c.759 §17]

Note: See note under 441.705.

441.720 Remittance or reduction of penalties. A civil penalty imposed under ORS 441.710 may be remitted or reduced upon such terms and conditions as the Director of Human Services considers proper and consistent with the public health and safety. [1975 c.328 §3; 1987 c.428 §39]

Note: See note under 441.705.

441.725 [1975 c.328 §4; 1985 c.648 §3; 1987 c.428 §40; repealed by 1993 c.759 §19]

441.730 [1975 c.328 §5; repealed by 1977 c.261 §11]

441.735 [1975 c.328 §6; 1977 c.261 §10; 1989 c.706 §13; repealed by 1991 c.734 §122]

441.740 Judicial review. Judicial review of civil penalties imposed under ORS 441.710, shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty. [1975 c.328 §7]

Note: See note under 441.705.

441.745 Penalties to General Fund. All penalties recovered under ORS 441.710 to 441.740 shall be paid into the State Treasury and credited to the General Fund. [1975 c.328 §8]

Note: See note under 441.705.

SUICIDE ATTEMPTS BY MINORS

441.750 Suicide attempts by minors; referral; report; disclosure of information; limitation of liability. (1) Any hospital which treats as a patient a person under 18 years of age because the person has attempted to commit suicide:

(a) Shall cause that person to be provided with information and referral to in-patient or out-patient community resources, crisis intervention or other appropriate intervention by the patient's attending physician, hospital social work staff or other appropriate staff.

(b) Shall report statistical information to the Department of Human Services about the person described in this subsection but is not required to report the name of the person.

(2) Any disclosure authorized by this section or any unauthorized disclosure of information or communications made privileged and confidential by this section shall not in any way abridge or destroy the confidential or privileged character thereof except for the purposes for which any authorized disclosure is made. Any person making a disclosure authorized by this section shall not be liable therefor, notwithstanding any contrary provisions of law.

(3) No physician, hospital or hospital employee shall be held criminally or civilly liable for action pursuant to this section, provided the physician, hospital or hospital employee acts in good faith on probable cause and without malice. [1987 c.189 §1]

Note: 441.750 and 441.755 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.755 Report form; contents. (1) The Department of Human Services shall prescribe a form to be used by hospitals to make the report required by ORS 441.750 (1)(b) and shall prescribe the frequency of such reports.

(2) The report form may include the name of the hospital reporting, the date of birth, race and sex of person described in subsection (1) of this section, the suicide method used by the person and known prior attempts in the past 12 months.

(3) The department shall compile the results from the reports and report the results to the public. [1987 c.189 §2]

Note: See note under 441.750.

441.810 [Formerly 441.510; repealed by 1979 c.284 §199]

MISCELLANEOUS

441.815 Smoking of tobacco in certain hospital rooms prohibited. (1) No hospital employee, patient or visitor shall smoke any cigar, cigarette or tobacco in any form in any:

(a) Room of the hospital in which more than one patient is accommodated, unless the room is specifically designated for smoking; or

(b) Other areas where patient care is provided in the hospital.

(2) The administrator or person in charge of a hospital shall designate reasonable areas in lobbies and waiting rooms where smoking is not permitted.

(3) The administrator or person in charge of the hospital shall designate a reasonable number of rooms in the hospital where smoking is not permitted.

(4) As used in this section, "hospital" has the meaning given the term in ORS 442.015. [Formerly 441.515; 1977 c.173 §1; 1983 c.740 §160]

441.820 Procedure for termination of physician's privilege to practice medicine at health care facility; immunity from damage action for good faith report. (1) When a health care facility restricts or terminates the privileges of a physician to practice medicine at that facility, it shall promptly report, in writing, to the Board of Medical Examiners for the State of Oregon all the facts and circumstances that resulted in the restriction or termination.

(2) A health care facility which reports or provides information to the Board of Medical Examiners for the State of Oregon under this section and which provides information in good faith shall not be subject to an action for civil damages as a result thereof. [1977 c.448 §7]

441.825 Authority of hospital to require medical staff to provide professional liability insurance. (1) A governing body of a hospital licensed under ORS 441.015 to 441.087 may require all members of its medical staff to:

(a) Provide evidence of professional medical liability insurance in a reasonable amount as specified by the hospital governing board;

(b) Post a bond in lieu of evidence of professional medical liability insurance in a reasonable amount as specified by the hospital governing board; or

(c) Demonstrate annually financial responsibility for a reasonable amount as specified by the hospital governing board.

(2) As used in this section:

(a) "Medical staff" includes those individuals licensed by this state under ORS chapter 677 and granted privileges to practice in the hospital by the hospital governing board.

(b) "Professional medical liability insurance" means casualty insurance against legal liability for death, injury or disability of a human being arising from any medical, surgical or dental treatment, omission or operation. [1977 c.449 §1; 1981 c.377 §1]

Note: 441.825 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.827 [1991 c.774 §§1,2; renumbered 676.300 in 2003]

441.840 [1987 c.670 §1; repealed by 1989 c.800 §8]

PENALTIES

441.990 Criminal penalties. (1) Violation of ORS 441.015 (1) is a violation punishable, upon conviction, by a fine of not more than $100 for the first violation and not more than $500 for each subsequent violation. Each day of continuing violation after a first conviction shall be considered a subsequent violation.

(2)(a) Violation of ORS 441.815 (1) is a violation punishable by a fine of $10.

(b) Violation of ORS 441.815 (2) or (3) is a Class D violation.

(3) Any person who willfully prevents, interferes with, or attempts to impede in any way the work of any duly authorized representative of the Department of Human Services in the lawful carrying out of the provisions of ORS 441.087 (1) is guilty of a Class C misdemeanor.

(4) The removal of the notice required by ORS 441.030 (5) by any person other than an official of the department is a Class C misdemeanor. [Subsection (2) enacted as 1971 c.166 §2; subsection (3) enacted as 1975 c.294 §4; 1977 c.173 §2; 1977 c.582 §48; 1987 c.428 §41; 1989 c.171 §56; 1999 c.1051 §183; 2001 c.900 §178]

441.995 Factors considered in determining penalties under ORS 441.630 to 441.680; civil penalty. (1) In adopting criteria for establishing the amount of civil penalties for violations of ORS 441.630 to 441.680, the Department of Human Services shall consider:

(a) Any prior violations of laws or rules pertaining to facilities;

(b) The financial benefits, if any, realized by the facility as a result of the violation;

(c) The gravity of the violation, including the actual or potential threat to the health, safety and well-being of one or more residents;

(d) The severity of the actual or potential harm caused by the violation; and

(e) The facility's past history of correcting violations and preventing the recurrence of violations.

(2) The department may impose a civil penalty for abuse in accordance with rules adopted under ORS 441.637 (1). Facilities assessed civil penalties for abuse shall be entitled to a contested case hearing under ORS chapter 183.

(3) If the department finds the facility is responsible for abuse and if the abuse resulted in a resident's death or serious injury, the department shall impose a civil penalty of not less than $500 nor more than $1,000 for each violation, or as otherwise required by federal law.

(4) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the department's authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations that do not constitute abuse. [1993 c.759 §10 (3),(4),(5),(6); 2005 c.22 §299]

Note: See note under 441.637.