

Chapter 441

1975 REPLACEMENT PART

Regulation and Financing of Hospitals

LICENSING AND SUPERVISION OF INPATIENT CARE FACILITIES

- 441.005 Definitions for ORS 441.005 to 441.063
- 441.007 Facilities excluded from "health care facility" definition
- 441.010 Purpose of ORS 441.005 to 441.063
- 441.015 Licensing of facilities required; compliance with rules
- 441.020 Application; fees; refund
- 441.022 Factors to be considered in licensing
- 441.025 License issuance; renewal; disclosure; transfer; posting
- 441.030 Denial, suspension or revocation of licenses; notice; effective date; request for hearing
- 441.037 Hearings; procedures; judicial review of rules and orders
- 441.050 Additional remedies
- 441.055 Rules; evidence of compliance; financial statements
- 441.057 Complaints about care; rules
- 441.060 Inspections; approval of plans and specifications
- 441.063 Use of facilities by licensed podiatrists; regulation of admission and conduct
- 441.065 Exemption of certain religious institutions
- 441.067 Inspection reports, complaint procedures and rules; posting
- 441.077 Revocation of license for imposing restrictions upon certain physicians; construction of section
- 441.085 Establishing licensing classifications; use of descriptive titles limited
- 441.087 General inspection
- 441.090 Certificates of need required before commitment to capital expenditure; exceptions; application; fee; cooperative and joint review
- 441.092 Utilization of existing facilities; effect of conflict with Social Security Act
- 441.095 Issuance of certificates of need; judicial review; revocation or rescission of certificate

HOSPITAL AND MEDICAL FACILITY SURVEY AND CONSTRUCTION

- 441.125 Hospital and medical facility survey
- 441.130 Hospital and medical facility construction plan; conforming to federal standards; reports to Surgeon General
- 441.135 Applications for construction; approval; extent of authority
- 441.140 Federal aid; use and deposit of funds for administration
- 441.145 Medical Facilities Construction Account
- 441.150 Administration; employees

HEALTH FACILITIES COST REVIEW

- 441.415 Definitions for ORS 441.415 to 441.480
- 441.420 Policy
- 441.425 Health Facilities Cost Review Commission;

appointment; confirmation; qualifications; term; vacancy

- 441.430 Chairman; quorum; compensation and expenses
- 441.435 Commission functions
- 441.440 Commission authority over accounting and reporting systems of facilities
- 441.445 Investigations; confidentiality of data
- 441.460 Study determinations and findings
- 441.465 Factors to be considered in determination of reasonableness of rates
- 441.470 Cooperation in health planning
- 441.475 Executive secretary; personnel; contracts for services
- 441.480 Civil penalty for failure to file financial records and reports

FINANCING OF HOSPITAL CONSTRUCTION

- 441.525 Definitions for ORS 441.525 to 441.595
- 441.530 Policy
- 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 of authority
- 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 assets on dissolution
- 441.590 Authority of ORS 441.525 to 441.595
- 441.595 Construction of ORS 441.525 to 441.595

CIVIL PENALTIES

- 441.705 Definition of "person" for ORS 441.705 to 441.745
- 441.710 Civil penalties; when imposed
- 441.715 Schedule of civil penalties
- 441.720 Remittance or reduction of penalties
- 441.725 Factors considered in imposing penalties
- 441.730 Notice; application for hearing
- 441.735 Order assessing penalty
- 441.740 Judicial review
- 441.745 Penalties to General Fund

MISCELLANEOUS

- 441.810 Access to hospital records
- 441.815 Smoking of tobacco in certain hospital rooms prohibited

PENALTIES

- 441.990 Penalties

CROSS REFERENCES

- Administration of noninjectable medication by unlicensed person, 678.035
 Administrative procedures and rules of state agencies, Ch. 183
 Ambulances and hearses, license fees, 481.210
 Compensation by health insurers for services performed at governmental hospitals, 743.116
 County and port hospitals; health districts, Ch. 440
 Death, determination, criteria, 146.087
 Deaths or injuries, report, Ch. 146
 Deaths, reporting, 432.307
 Deceased persons, duty of hospitals to notify person liable for funeral expenses before sending remains to undertaker, 97 160
 Dentists, nonresident, hospital permits, 679.050
 Discrimination by race, creed, color or national origin prohibited, 30 670
 Employes, labor-management relations, 662.705 to 662 795
 Evidentiary use of hospital records, 41 915 to 41 945
 Fund-raising activities, certain hospitals not subject to reporting requirements, 128 825
 Health care facility liquor license, 471 257
 Hospital Siting Advisory Committee, 431 023
 Indigents injured in motor vehicle accidents, hospital and medical costs, Ch 445
 Liens of hospitals, enforcement, 87 555 to 87 585
 Medical care furnished to employes of public contractor, payment, 279 540
 Medical or dental treatment for minors without parental consent, 109 640
 Mental health services, local, 430 610 to 430 670
 Mentally ill and mentally deficient persons brought into state for treatment, liability of institutions receiving, 428.270
 Mentally ill persons, procedure for commitment, Ch 426
 Nursing home administrators, 678 710 to 678 840
 Petition to perform psychosurgery or intercranial brain stimulation, 426 710
 Pharmacy laws, application to inpatient care facilities, 689 170
 Phenylketonuria, reporting of cases required, 433 295
 State aid to institutions supporting maternity and venereal cases, 418 505 to 418 530
 State tuberculosis hospital, Ch 437
 Statistics to be kept by supervisors of institutions, 432 165
 Unemployment compensation exclusion, 657 030
- 441.015**
 License for institutions caring for venereally infected children, 418 355 to 418 370
 Licensing of nursing home administrators, 678 710 to 678 840
- 441.060**
 Building regulations for hospitals, 479 030, 479 090
- 441.135**
 Building regulations for hospitals, 479.030, 479 090
- 441.150**
 Merit system for state employes, Ch 240
- 441.810**
 Access to hospital records of inmates of state institutions, 179 495
 Inadmissibility of certain hospital data, 41 675

LICENSING AND SUPERVISION OF INPATIENT CARE FACILITIES

441.005 Definitions for ORS 441.005 to 441.063. As used in ORS 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990, unless the context requires otherwise:

(1) "Health care facility" means an establishment or organization as defined in paragraphs (a), (b) and (c) of this subsection.

(a) "Hospital" means an establishment with an organized medical staff, with permanent facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, or to provide treatment for the mentally ill.

(b) "Long term care facility" means an establishment with permanent facilities that include inpatient beds; providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the division, to provide treatment for two or more unrelated patients primarily requiring inpatient convalescent or long term care. Facilities furnishing primarily domiciliary care are not included.

(c) "Special inpatient care facility" means an establishment with permanent inpatient beds and other facilities designed and utilized for special health care purposes, to include but not limited to: Rehabilitation center, college infirmary, chiropractic facility, facility for the treatment of alcoholism, or inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the division, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

(2) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and includes any receiver, trustee, assignee or other similar representative thereof.

(3) "Governmental unit" means the state, or any county, municipality or other political subdivision, or any department, division, board or other agency of any of the foregoing.

(4) "Division" means the Health Division of the Department of Human Resources.
[Amended by 1971 c.730 s.1; 1973 c.840 s.1]

441.007 Facilities excluded from "health care facility" definition. "Health care facility" as defined in ORS 441.005 to 441.025, 441.050 to 441.060 and 441.065 to 441.095 excludes facilities established by ORS 430.305 to 430.335 for treatment of alcoholism, community mental health programs established under ORS 430.610 to 430.670 and facilities established under ORS 475.645 to 475.725 for treatment of drug abuse.

[1973 c.840 s.2]

Note: 441.007 was not added to and made a part of 441.005 to 441.063 or any other series in ORS chapter 441 by legislative action.

441.010 Purpose of ORS 441.005 to 441.063. The purpose of ORS 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990 is to provide for the development, establishment and enforcement of basic standards:

(1) For the care and treatment of individuals in health care facilities.

(2) For the construction, maintenance and operation of such facilities which, in the light of existing knowledge, will insure such treatment as is recognized and authorized by the laws of this state as being safe treatment of such individuals in such facilities.

[Amended by 1971 c.730 s.3; 1973 c.840 s.3]

441.015 Licensing of facilities required; compliance with rules. (1) After July 1, 1947, 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 in this state without a license.

(2) Any health care facility which is in operation at the time of promulgation of any applicable rules or minimum standards under ORS 441.055 shall be given a reasonable length of time within which to comply with such rules or minimum standards.

[Amended by 1971 c.730 s.4; 1973 c.840 s.4]

441.020 Application; fees; refund. (1) Licenses shall be obtained from the division.

(2) Applications shall be upon such forms and shall contain such information as the division 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 division for carrying out the provisions of ORS 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990.

(4) Except as otherwise provided in subsection (5) or (6) of this section, for hospitals and special inpatient care facilities with:

(a) Less than 50 beds, the annual license fee shall be up to \$100.

(b) Fifty beds or more and less than 200 beds, the annual license fee shall be up to \$150.

(c) Two hundred or more beds, the annual license fee shall be up to \$200.

(5) For any other health care facilities with:

(a) Less than 10 beds, the annual license fee shall be up to \$60.

(b) Ten beds or more and less than 51 beds, the annual license fee shall be up to \$90.

(c) Fifty one beds or more, the annual license fee shall be up to \$120.

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

(7) Any health care facility license may be indorsed to permit operation of facilities of the licensee 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 the facilities at each location were separately licensed.

[Amended by 1957 c.697 s.1; 1969 c.535 s.1; 1971 c.650 s.19; 1971 c.730 s.5, 1973 c.840 s.5]

441.022 Factors to be considered in licensing. In determining whether to license a health care facility pursuant to ORS 441.025, the division 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 s.2; 1971 c.730 s.6; 1973 c.840 s.6]

441.025 License issuance; renewal; disclosure; transfer; posting. (1) Upon receipt of an application and the license fee, the division shall issue a license if it finds that the applicant and health care facilities comply with ORS 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990, the rules of the division and if it

does not receive within the time specified a certificate of noncompliance issued by the State Fire Marshal, his deputy, or approved authority pursuant to ORS 479.220.

(2) Each license, unless sooner suspended or revoked, shall be renewable annually for the fiscal year beginning on July 1 upon payment of the fee and approval by the division of an annual report containing such information as may be prescribed by the division, in such form as the division prescribes by rule and if a certificate of non-compliance has not been issued by the State Fire Marshal, his 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 except with the written approval of the division.

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

(5) No license shall be issued or renewed for any health care facility which has been constructed, expanded or altered in a manner subject to ORS 441.090, unless a certificate of need has first been issued therefor pursuant to ORS 441.095.

(6) No license shall be issued or renewed for any long term care facility unless the applicant has included in the application the name 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.

[Amended by 1957 c.697 s.2; 1961 c.316 s.6; 1967 c.89 s.3; 1971 c.730 s.7; 1973 c.38 s.1, 1973 c.840 s.7]

441.030 Denial, suspension or revocation of licenses; notice; effective date; request for hearing. (1) (a) The Health Division of the Department of Human Resources, pursuant to ORS 479.215, shall deny, suspend or revoke a license in any case where the State Fire Marshal, or his representative, certifies that there is a failure to comply with all applicable laws, lawful ordinances, rules and regulations relating to safety from fire.

(b) The division may deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with ORS 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990 or the rules, regulations or minimum standards promulgated under those statutes.

(2) A denial, suspension or revocation shall be effected by mailing to the applicant or licensee, by registered mail, or by personal service of, a notice setting forth the particular reasons for such action.

(3) A denial, suspension or revocation shall become effective 10 days after the mailing or service of the notice, unless the applicant or licensee, within such 10 day period, gives written notice to the division requesting a hearing, in which case the notice shall be deemed to be suspended.

[Amended by 1959 c.222 s.1; 1961 c.316 s.7; 1971 c.730 s.8]

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

441.037 Hearings; procedures; judicial review of rules and orders. (1) Where the board 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 183.310 to 183.500.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be in accordance with ORS 183.310 to 183.500.

[1971 c.734 s.56]

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

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

441.050 Additional remedies. Notwithstanding the existence and pursuit of any other remedy, the division 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 without a license.

[Amended by 1971 c.730 s.12; 1973 c.840 s.8]

441.055 Rules; evidence of compliance; financial statements. (1) The division, with the advice of the advisory board which may be appointed under ORS 431.325, shall adopt, amend, promulgate and enforce 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 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990.

(2) Rules describing care given in health care facilities shall include but not be limited to standards of adequate professional staff organizations, suitable delineation of professional privileges and adequate staff analyses of clinical records. The division 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.

[Amended by 1965 c.352 s.1, 1971 c.730 s.13, 1973 c.837 s.14; 1973 c.840 s.9]

441.057 Complaints about care; rules. Rules adopted by the Health Division pursuant to ORS 441.055 shall include procedures for the filing of complaints as to the standard of care in any licensed long term care facility and provide for the confidentiality of the identity of any complainant.

[1975 c.360 s.2]

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

(2) The division 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 441.095, if required, submit plans and specifications therefor to the division for preliminary inspection and approval or recommendations with respect to compliance with the rules authorized by ORS 441.055.

[Amended by 1965 c.352 s.2; 1971 c.730 s.14; 1973 c.840 s.10]

441.063 Use of facilities by licensed podiatrists; regulation of admission and conduct. The rules of the hospital shall include provisions for the use of the hospital facilities by duly licensed podiatrists 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 podiatrists, shall regulate the admission and the conduct of the podiatrists while using the facilities of the hospital and shall prescribe procedures

whereby the podiatrist's use of the facilities may be suspended or terminated.

[1973 c.279 s.2]

441.065 Exemption of certain religious institutions. ORS 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990 or the rules adopted pursuant there to do not authorize the supervision, regulation or control of the remedial care or treatment of residents or patients in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination, 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 441.005 to 441.063, 441.085 to 441.095 and subsection (3) of 441.990.

[Amended by 1971 c.730 s.17; 1973 c.840 s.11]

441.067 Inspection reports, complaint procedures and rules; posting. (1) The Health Division shall provide each licensed long term care facility in the state with:

(a) The most recent inspection report conducted by the division 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 division affecting patient care standards for long term care facilities,

written in clear, concise language readily comprehensible by the average person.

(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 s.3]

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

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

441.077 Revocation of license for imposing restrictions upon certain physicians; construction of section. (1) If the governing body of a health care facility excludes or expels a person licensed under ORS chapter 677 from staff membership, or lim-

its in any way his professional privilege in the hospital solely because of the school of medicine to which he belongs, the license of the health care facility shall be subject to revocation in the manner provided in ORS 441.005 to 411.065.

(2) Nothing in this section is intended to limit the authority of the governing body of a health care facility with respect to a person who has violated the reasonable rules and regulations of the health care facility 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 s.1; 1973 c.840 s.12]

Note: 441.077 was not added to and made a part of ORS chapter 441 or of any series therein by legislative action.

441.080[Repealed by 1971 c.730 s.25]

441.085 Establishing licensing classifications; use of descriptive titles limited.

(1) The division may by rule establish classifications for the various types of health care facilities which are licensed under this chapter.

(2) Health care facilities licensed by the division shall neither assume a descriptive title or be held out under any descriptive title other than the classification title established by the division and under which a health care facility is licensed.

[1971 c.730 s.2; 1973 c.840 s.13]

441.087 General inspection. (1) The Health Division 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 employe 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 Administrator of the Health Division.

[1975 c.294 ss.2, 3]

441.090 Certificates of need required before commitment to capital expenditure; exceptions; application; fee; cooper-

ative and joint review. (1) As used in this section, ORS 441.092 and 441.095:

(a) "Capital expenditure" means an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, which exceeds \$200,000, and which:

(A) Increases the bed capacity of the health care facility;

(B) Changes the location or license classification of the health care facility;

(C) Provides a new clinical service, or substantially expands an existing clinical service, of the health care facility; or

(D) Involves a single piece of equipment used in the provision of clinical services.

(b) "Defined population" means the population that is or may reasonably be expected to be served by existing or proposed health care facilities in the community affected. "Defined population" shall also include persons who prefer to receive the services of a particular recognized school or theory of health care or maintenance. "Defined population" need not be limited to a geographical area.

(c) "Health systems agency" means a recognized entity under the National Health Planning and Resources Development Act of 1974, having the powers, duties and functions set out under section 1512, 1513 and 1640 of such Act.

(2) (a) The cost of studies, surveys, designs, plans, working drawings, specifications and other matters essential to the acquisition, improvement, expansion or replacement of a plant or equipment with respect to which an expenditure is made shall be included in determining whether the expenditure exceeds \$200,000 for the purposes of paragraph (a) of subsection (1) of this section. However, if a capital expenditure is denied or abandoned, such cost at the option of the facility may be treated as an operating cost.

(b) An expenditure to acquire real property shall not be a capital expenditure unless the real property is used with another expenditure which alone or together with the real property constitutes a capital expenditure.

(c) An expenditure for a construction project undertaken by a health care facility as its own contractor shall be a capital expenditure if the definition in paragraph (a) of subsection (1) of this section otherwise applies.

(3) Prior to a capital expenditure or a commitment to a capital expenditure, or a lease or similar agreement in lieu of a

capital expenditure, by a health care facility, a certificate of need shall be obtained from the State Health Commission.

(4) (a) The State Health Commission shall promulgate rules specifying criteria and governing procedures for the exemption of capital expenditures from the application of this section and ORS 441.095 in view of the limited or specialized nature of the changes which would be effected by the expenditures.

(b) The State Health Commission shall promulgate rules providing for accelerated filing, review and approval of, or may waive review of a proposed capital expenditure for repairs, replacement of plant or equipment, when determined by the commission to be an emergency case.

(5) (a) An application for a certificate of need shall be submitted to the division on forms provided for this purpose. The application shall contain the information which the division may require by rule.

(b) An application shall be accompanied by a fee prescribed as provided in this section. Subject to the approval of the Executive Department, the division shall prescribe application fees for separate classifications of capital expenditures subject to this section, and for separate classifications of health care facilities, not to exceed the following maximums:

(A) Hospitals, \$3,000;

(B) Long term care facilities, \$2,000;

(C) Special inpatient care facilities, \$2,000.

In the event a public hearing is held pursuant to ORS chapter 183, the division may impose an additional fee of \$1,000 but not exceeding for any classification the costs of the division and of the State Health Commission incurred with respect to applications in the same classification.

(6) A health care facility may submit an application for a certificate of need at any time. The State Health Commission may, if necessary to consider an application with applications from other health care facilities in the same geographic area serving the same defined population, delay consideration of the application a reasonable time to permit the other health care facilities so desiring to submit their applications.

(7) The State Health Commission shall adopt rules governing the reporting, by all health care facilities, of their intent to make capital expenditures during the succeeding year, and the general nature of such expenditures. Such a report shall not be considered

as an application for a certificate of need, but also shall be submitted promptly to the appropriate health systems agency.

(8) Health care facilities coming under the provisions of ORS 441.065 are not subject to this section or ORS 441.095.

(9) The State Health Commission shall adopt rules governing procedures for cooperative and joint review, to the extent practicable, of applications for certificates of need, between the designated state planning agency and each appropriate health systems agency (or local health planning agency functioning prior to establishment of a designated health systems agency).

[1971 c.730 s.15; 1973 c.358 s.6; 1973 c.840 s.14; 1975 c.485 s.1]

441.092 Utilization of existing facilities; effect of conflict with Social Security Act. (1) In the administration of ORS 441.005 to 441.030, 441.050 to 441.065, 441.085 to 441.095, 441.125 to 441.150 and subsection (3) of 441.990, consideration shall be given to the efficiency of the utilization of an existing health care facility which is, or will be, serving the defined population so as to avoid unnecessary duplication of facilities and to encourage maximum efficiency in the use of the health care facilities which then serve or will be serving the defined population.

(2) If any part of ORS 441.005, 441.090 or 441.095 is found to be not in conformity with the federal Social Security Act, as amended, by reason of any conflict between any section, portion, clause or part of ORS 441.005 to 441.025, 441.050 to 441.060 and 441.065 to 441.095 and the federal Social Security Act, as amended, the conflicting portion, clause or part of ORS 441.005, 441.090 or 441.095 is inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of ORS 441.005, 441.090 or 441.095.

[1975 c.485 s.4]

441.095 Issuance of certificates of need; judicial review; revocation or rescission of certificate. (1) The State Health Commission shall issue a certificate of need if it finds that the proposed capital expenditure is reasonably necessary to provide care to the defined population in a manner which is economically practicable, which maintains high quality standards, and which is appropriate to the timely and economic development of adequate and effective health services in the area, or to meet the needs of

members, subscribers and enrollees of institutions and health care plans which operate or support particular health care facilities for the purpose of rendering health care to such members, subscribers and enrollees. In making such determinations, the State Health Commission shall take into consideration and shall make specific findings regarding:

(a) The health service plans of the respective health systems agency established under the National Health Planning and Resources Development Act of 1974 (or the local health planning agency functioning prior to establishment of an appropriate health systems agency).

(b) The need for health care services in the area or the requirements of the defined population.

(c) The availability and adequacy of health care services in facilities which are currently serving the defined population and which conform to state standards.

(d) The need for special equipment and services in the area which are not reasonably and economically accessible to the defined population.

(e) The need for research and educational facilities.

(f) The probable economies and improvement in service that may be derived from the operation of joint central services or from joint, cooperative, or shared health resources which are accessible to the defined population.

(g) The availability of sufficient manpower in the professional disciplines required to maintain the facility.

(h) The plans for, and development of, comprehensive health care services and facilities for the defined population to be served. Such services may be either direct or indirect through formal affiliation with other health care programs in the area and shall include preventive diagnostic treatment and rehabilitation services.

(i) The needs of members, subscribers and enrollees of institutions and health care plans which operate or support particular health care facilities for the purpose of rendering health care to such members, subscribers and enrollees.

(j) In the case of an application by a health care facility established or operated by a religious body or denomination, the needs of the members of such religious body or denomination for care and treatment in accordance with their religious or ethical convictions may be considered to be public need.

(k) The proposed facility will be adequately funded.

(2) In any case in which the specifically enumerated criteria are not judged pertinent by the State Health Commission, the commission shall so state and give the reasons therefor.

(3) In any proceeding challenging denial of application for a certificate of need, the State Health Commission shall follow the procedures set forth in the provisions of ORS chapter 183 relating to a contested case. An applicant who is dissatisfied with the decision of the State Health Commission, or any person affected thereby, including the administrator of the division, is entitled to judicial review thereof under ORS 183.310 to 183.500.

(4) If the State Health Commission makes a decision contrary to the findings and recommendations of the appropriate health systems agency (or local health planning agency functioning prior to establishment of an appropriate health systems agency), the commission shall notify the appropriate agency. Upon request, the commission shall provide to the agency all information and a statement of the rationale used in reaching its decision, and afford the agency an opportunity to have its objections heard by the commission.

(5) A capital expenditure shall not be incurred or obligated by any health care facility after September 13, 1975, except upon application for and receipt of a certificate of need as provided in ORS 441.090 and this section.

(6) Once a certificate of need has been issued, it may not be revoked or rescinded unless it was acquired by fraud or deceit. However, if the State Health Commission finds that a health care facility is making a capital expenditure, or a commitment to a capital expenditure, or a lease or similar agreement in lieu of a capital expenditure, not within the scope of the certificate of need, the State Health Commission may limit the capital expenditure to that within the scope of the certificate of need. If the commission finds that a health care facility is making a capital expenditure, or a commitment to a capital expenditure, or a lease or similar agreement in lieu of a capital expenditure, that is grossly in excess of the amount specified in its application, the commission may reconsider such application. [1971 c.730 s.16; 1973 c.358 s.7; 1973 c.840 s.15; 1975 c.485 s.2]

HOSPITAL AND MEDICAL FACILITY SURVEY AND CONSTRUCTION

441.105[Amended by 1955 c 464 s 1, 1965 c 308 s 1, repealed by 1971 c 730 s 25]

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

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

441.120[Repealed by 1971 c 730 s 25]

441.125 Hospital and medical facility survey. The Health Division shall make a survey of the physical facilities within the state now existing and which may be necessary to provide necessary physical facilities for furnishing necessary hospital, clinic, medical facility and similar services to all people of the state. This survey shall include:

(1) A survey of the location, size and character of all existing public and private, proprietary as well as nonprofit, hospitals and medical facilities within the state.

(2) An evaluation of the sufficiency of such hospitals and medical facilities to supply the necessary physical facilities for furnishing adequate hospital, clinical, medical facility and similar services to all the people of the state.

(3) Compilation of data and conclusions, together with a statement of the additional facilities necessary, in conjunction with the existing structures, to supply such services. The Health Division may utilize, so far as practicable, any appropriate reports, surveys and plans prepared by other state agencies.

(4) The Comprehensive Health Planning Authority in the Health Division shall consult and advise the division in the administration of hospital and medical construction matters.

[Amended by 1955 c 464 s 3, 1971 c 730 s 18]

Note: Section 9, chapter 358, Oregon Laws 1973, provides

Sec. 9. There are imposed upon, transferred to and vested in the State Health Commission all the duties, functions and powers of the Comprehensive Health Planning Authority

441.130 Hospital and medical facility construction plan; conforming to federal standards; reports to Surgeon General. Upon recommendation of the Comprehensive Health Planning Authority, the Health Division shall:

(1) Set forth the relative need, as determined in accordance with standards prescribed by the Surgeon General, for the several projects included in the hospital and

medical facility construction program. This program shall also provide for construction, maintenance and operation in order of the relative need as determined by the hospital and medical facility survey and when funds are made available for that purpose.

(2) Provide such methods of administration of the plan as the Surgeon General finds necessary for its proper and efficient operation including provision for affording to an applicant for a construction project an opportunity for hearing before the Health Division.

(3) Make such reports in the form and containing such information as the Surgeon General may from time to time require and take steps necessary to assure the correctness and verification of such reports.

(4) From time to time review its construction program and submit to the Surgeon General and such other agencies as he may direct any necessary modifications of the plan.

[Amended by 1955 c.464 s.4; 1971 c.730 s.19]

441.135 Applications for construction; approval; extent of authority.

(1) The Health Division of the Department of Human Resources shall, in connection with the plan outlined in ORS 441.125 and 441.130, receive from public hospitals and medical facilities and from nonprofit hospitals and medical facilities applications for construction.

(2) The applications may include costs of construction only.

(3) In the event that such applications are in accordance with the state plan as outlined in ORS 441.130, the Health Division shall approve such applications and allot funds for said purposes out of any moneys appropriated to the State of Oregon for such purpose.

(4) The authority of the Health Division and the Comprehensive Health Planning Authority, with respect to any application for construction, shall cease upon the completion of construction included in such application.

[Amended by 1955 c.464 s.5; 1965 c.308 s.4; 1971 c.730 s.20]

441.140 Federal aid; use and deposit of funds for administration.

(1) The Department of Human Resources may apply for and receive from the Surgeon General, or from the Treasury of the United States as directed by the Surgeon General, such sums as are available for the administration of ORS 441.125 to 441.150 and the carrying out

of the purposes set forth therein. The costs of administration of those statutes shall be confined solely to such funds as may be made available.

(2) Reasonable allowances for the actual time of the members of the Health Division in the administration of ORS 441.125 to 441.150 shall be considered an expense of administration and shall be paid as other costs of administration of those statutes.

(3) Any sums appropriated by the Surgeon General, or by the Treasury of the United States, for the purpose of administration shall be deposited by the Department of Human Resources with the State Treasurer. These funds shall be credited to the Health Account and shall be used solely for the purpose of administration of ORS 441.125 to 441.150.

[Amended by 1955 c.464 s.6; 1971 c.730 s.21]

441.145 Medical Facilities Construction Account.

All funds applied for and received by the Department of Human Resources and allotted to the state by the Surgeon General, the Treasury Department, or other agency of the United States, for construction in carrying out the plan under ORS 441.130, shall be deposited with the State Treasurer and shall be credited to the Medical Facilities Construction Account, hereby created in the State Treasury, separate from the General Fund. The moneys in the Medical Facilities Construction Account hereby are continuously appropriated to be used solely for the purpose of construction and in accordance with the plan upon which the allotment to the state was based.

[Amended by 1955 c.464 s.7; 1965 c.308 s.5; 1965 c.439 s.5; 1971 c.730 s.22]

441.150 Administration; employes.

(1) ORS 441.125 to 441.150 shall be administered by the Health Division of the Department of Human Resources which division is designated as the sole agency for carrying out the purposes of those statutes.

(2) The Health Division may employ such assistants as are necessary to carry out the purposes of ORS 441.125 to 441.150.

[Amended by 1971 c.730 s.23]

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

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

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

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

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

- 441.216[1957 ss c13 s5 (enacted in lieu of 441.215), 1969 c.343 s3; repealed by 1971 c.727 s.203]
- 441.220[Amended by 1969 c.343 s.4; repealed by 1971 c.727 s.203]
- 441.225[Repealed by 1971 c.727 s.203]
- 441.227[1965 c.403 s.2, 1969 c.343 s.5; repealed by 1971 c.727 s.203]
- 441.230[Amended by 1965 c.403 s.3; 1969 c.343 s.6, repealed by 1971 c.727 s.203]
- 441.235[Amended by 1969 c.343 s.7, repealed by 1971 c.647 s.149 and 1971 c.727 s.203]
- 441.240[Amended by 1959 c.69 s.1, repealed by 1971 c.647 s.149]
- 441.245[Repealed by 1957 ss c.13 s.8]
- 441.250[Repealed by 1971 c.647 s.149]
- 441.255[Repealed by 1971 c.647 s.149 and 1971 c.727 s.203]
- 441.260[Amended by 1969 c.343 s.8, repealed by 1971 c.727 s.203]
- 441.265[Repealed by 1971 c.647 s.149 and 1971 c.727 s.203]
- 441.270[Amended by 1969 c.343 s.9, repealed by 1971 c.727 s.203]
- 441.275[Amended by 1969 c.343 s.10, repealed by 1971 c.727 s.203]
- 441.280[Amended by 1969 c.343 s.11, 1971 c.727 s.117; renumbered 440.325]
- 441.285[Amended by 1969 c.343 s.12, repealed by 1969 c.343 s.28, amended by 1969 c.669 s.8, 1973 c.796 s.61, renumbered 440.330]
- 441.290[Renumbered 440.335]
- 441.295[Amended by 1969 c.343 ss.13, 27, 1969 c.344 s.6, 1971 c.403 s.7; renumbered 440.340]
- 441.300[Amended by 1969 c.343 s.14, repealed by 1969 c.343 s.29 and 1969 c.345 s.20]
- 441.305[Amended by 1969 c.343 s.15, 1971 c.647 s.79; renumbered 440.350]
- 441.307[1957 ss c.13 s.7, 1969 c.343 s.16, repealed by 1971 c.647 s.149]
- 441.308[Repealed by 1957 ss c.13 s.8]
- 441.310[Amended by 1959 c.616 s.1, 1969 c.343 s.17; repealed by 1971 c.647 s.149]
- 441.315[Amended by 1971 c.647 s.80, renumbered 440.355]
- 441.320[Amended by 1967 c.37 s.1, 1967 c.353 s.1, 1971 c.89 s.1, 1971 c.727 s.118; renumbered 440.360]
- 441.325[Renumbered 440.365]
- 441.330[Renumbered 440.370]
- 441.335[Amended by 1963 c.9 s.25, 1969 c.343 s.18, renumbered 440.375]
- 441.340[Repealed by 1971 c.647 s.149]
- 441.345[Amended by 1969 c.2 s.1, 1969 c.343 s.19, 1969 c.694 s.7, 1971 c.36 s.4, renumbered 440.380]
- 441.350[Amended by 1969 c.343 s.20, renumbered 440.385]
- 441.355[Renumbered 440.390]
- 441.360[Amended by 1963 c.9 s.26; 1969 c.694 s.8, renumbered 440.395]
- 441.365[Amended by 1961 c.396 s.1, 1969 c.343 s.20a; 1969 c.694 s.9, 1971 c.36 s.5; 1973 c.284 s.3, renumbered 440.400]
- 441.370[Amended by 1969 c.343 s.21, renumbered 440.405]
- 441.375[Amended by 1973 c.284 s.4, renumbered 440.410]
- 441.380[Amended by 1969 c.343 s.22, repealed by 1971 c.727 s.203]
- 441.385[Amended by 1969 c.343 s.23, repealed by 1971 c.727 s.203]
- 441.390[Amended by 1969 c.343 s.24, repealed by 1971 c.727 s.203]
- 441.395[Subsection (2) enacted as 1957 c.584 s.1, repealed by 1969 c.343 s.30]
- 441.400[Amended by 1969 c.343 s.25, repealed by 1971 c.727 s.203]
- 441.405[Amended by 1969 c.343 s.26, repealed by 1971 c.727 s.203]
- 441.410[Repealed by 1971 c.727 s.203]

HEALTH FACILITIES COST REVIEW

441.415 Definitions for ORS 441.415 to 441.480. As used in ORS 441.055 and 441.415 to 441.480, unless the context requires otherwise:

(1) "Commission" means the Health Facilities Cost Review Commission established by ORS 441.055 and 441.415 to 441.480.

(2) "Health care facility" or "facility" means such facility as defined by paragraph (a) or (b) of subsection (1) of ORS 441.005 or a home as defined by subsection (2) of ORS 442.005 and includes all publicly owned and operated health care facilities. [1973 c.837 s.2]

441.420 Policy. The Legislative Assembly finds that rising costs of hospitals and other health care facilities are a matter of vital concern to the people of this state. The Legislative Assembly finds and declares that it is the policy of this state:

(1) To require hospitals to file for public disclosure such reports under systems of accounting as will enable both private and public purchasers of services from such facilities to make informed decisions in purchasing such services; and

(2) To encourage development of programs of research and innovation in the methods of delivery of institutional health care services of high quality at costs reasonably related to the nature and quality of the services rendered. [1973 c.837 s.1]

441.425 Health Facilities Cost Review Commission; appointment; confirmation; qualification; term; vacancy. (1) The Health Facilities Cost Review Commission is hereby established in the Department of Human Resources.

(2) The commission shall consist of seven members who shall be appointed by the Governor and confirmed by the Senate in the manner provided in ORS 171.560 and 171.570. Two members shall be providers of health care services, one of whom shall be a hospital administrator currently operating a hospital in Oregon. One member shall be a consumer member of the Comprehensive Health Planning Authority. The remaining members shall be representatives of the public who have no connection with the management of or policy making for any health care facility or who have no connection with public policy making or regulation of health care facilities. One of such public representatives shall have particular knowledge of fiscal and accounting matters and one shall have knowledge and experience in the public utility regulatory field.

(3) All appointments shall be for terms of two years.

(4) Vacancies shall be filled by appointment for an unexpired term by the Governor.

[1973 c 837 s 3]

441.430 Chairman; quorum; compensation and expenses. (1) The Governor shall appoint a chairman of the commission who shall not be a health industry representative.

(2) Four members of the commission shall constitute a quorum, and action of the commission for any purpose shall require the concurrence of not fewer than four members.

(3) Members shall be entitled to compensation and expenses as provided in ORS 292.495.

[1973 c.837 s.4]

441.435 Commission functions. (1) The commission may apply for, receive and accept grants, gifts, payments and other funds and advances, appropriations, properties and services from the United States, the State of Oregon or any governmental body, agency or agencies or from any other public or private corporation or person, and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects.

(2) The commission shall conduct or cause to have conducted such analyses and

studies relating to costs of health care facilities as it considers desirable, including but not limited to methods of reducing such costs, utilization review of services of health care facilities, peer review, quality control, financial status of any facility subject to ORS 441.055 and 441.415 to 441.480 and sources of public and private financing of financial requirements of such facilities. The commission shall direct such studies in such a manner as to determine whether or not regulation of hospital prices by the State of Oregon is necessary to protect the health or welfare of the people of Oregon. The commission shall report its findings and recommendations to the Governor on or before January 2, 1975.

(3) The commission may also:

(a) Hold public hearings, conduct investigations and require the filing of information relating to any matter affecting the cost of services in all health care facilities;

(b) Subpena witnesses, papers, records and documents the commission considers material or relevant in connection with its functions, subject to the provisions of ORS chapter 183; and

(c) Exercise, subject to the limitations and restrictions imposed by ORS 441.055 and 441.415 to 441.480, all other powers which are reasonably necessary or essential to carry out the express objectives and purposes of ORS 441.055 and 441.415 to 441.480.

[1973 c 837 s 6]

441.440 Commission authority over accounting and reporting systems of facilities. (1) The commission shall by rule specify one or more uniform systems of accounting and financial reporting, necessary to meet the requirements of ORS 441.055 and 441.415 to 441.480. Such systems shall include such cost allocation methods as may be prescribed and such records and reports of revenues, expenses, other income and other outlays, assets and liabilities, and units of service as may be prescribed. Each facility under the commission's jurisdiction shall adopt such systems for its fiscal period starting on or after July 1, 1974, and shall make the required reports on such forms as may be required by the commission. The commission may extend the period by which compliance is required upon timely application and for good cause. Filings of such records and reports shall be made at such times as may be reasonably required by the commission.

(2) Existing systems of accounting and reporting used by health care facilities shall

be given due consideration by the commission in carrying out its duty of specifying the systems of accounting and uniform reporting required by ORS 441.055 and 441.415 to 441.480. The commission in so far as reasonably possible shall adopt accounting and reporting systems and requirements which will not unreasonably increase the administrative costs of the facility.

(3) The commission may allow and provide for modifications in the accounting and reporting system in order to correctly reflect differences in the scope or type of services and financial structure between the various categories, sizes or types of health care facilities and in a manner consistent with the purposes of ORS 441.055 and 441.415 to 441.480.

(4) The commission shall establish specific annual reporting provisions for facilities that receive a preponderance of their revenue from associated comprehensive group-practice prepayment health care service plans. Notwithstanding any other provisions of ORS 441.055 and 441.415 to 441.480, such facilities shall be authorized to utilize established accounting systems and to report costs and revenues in a manner which is consistent with the operating principles of such plans and with generally accepted accounting principles. When such facilities are operated as units of a coordinated group of health facilities under common ownership, they shall be authorized to report as a group rather than as individual institutions, and as a group shall submit a consolidated balance sheet, income and expense statement and statement of source and application of funds for such group of health facilities
[1973 c 837 s 7]

441.445 Investigations; confidentiality of data. (1) Whenever a further investigation is considered necessary or desirable by the commission to verify the accuracy of the information in the reports made by health care facilities, the commission may make any necessary further examination of the facility's records and accounts. Such further examinations include, but are not limited to, requiring a full or partial audit of all such records and accounts.

(2) In carrying out the duties prescribed by ORS 441.055 and 441.415 to 441.480, the commission may utilize its own staff or may contract with any appropriate, independent, qualified third party. No such contractor shall release or publish or otherwise use any information made available to it under its

contractual responsibility unless such permission is specifically granted by the commission.

[1973 c 837 s 8]

441.460 Study determinations and findings. (1) In the conduct of the study the commission shall determine to its satisfaction that:

(a) The total prices and costs of each facility are reasonably related to the total services offered by the facility;

(b) The facility's aggregate rates are reasonably related to the facility's aggregate costs; and

(c) Rates are set equitably among all purchasers or classes of purchasers of services without unjust discrimination or preference.

(2) The commission may review the reasonableness of rates for particular services, supplies or materials established by any health care facility.

(3) When the commission finds that rates charged by a facility are excessive because of underutilization of a service or unnecessary duplication of a service, it shall report its findings to the facility and to the Comprehensive Health Planning Authority.

[1973 c.837 s 9]

441.465 Factors to be considered in determination of reasonableness of rates.

(1) In determining whether a rate charged by a health care facility is reasonable, the commission shall take into consideration the total financial requirements of the facility and shall consider, among other matters:

(a) Necessary operating expenses related to patient care.

(b) Expenses incurred for rendering services to patients for whom payment is not made in full, including, but not limited to, contractual allowances imposed by federal or state law, charity care and uncollectable accounts.

(c) All properly incurred interest charges on indebtedness for both capital and operating needs.

(d) Unreimbursed costs of education, both primary and continuing.

(e) Unreimbursed expenses for research related to patient care.

(f) Reasonable depreciation expenses based on the expected useful life of the property and equipment involved.

(g) Amortization of properly incurred capital and operating related indebtedness.

(h) Requirements for capital expenditures approved by the Comprehensive Health

Planning Authority for replacement, modernization, renovation and expansion of services and facilities.

(i) Requirements for necessary working capital including, but not limited to operating cash, patients' accounts receivable and inventories.

(j) Federal, state and local taxes not ordinarily considered operating expenses where applicable.

(2) The commission shall consider that nonprofit and governmental health care facilities must charge rates which will enable them to render effective and efficient services of high quality on a solvent basis.

(3) The commission shall consider that proprietary health care facilities must charge rates which will enable them to render effective and efficient services including a fair return to their owners.

(4) In considering the reasonableness of rates for health care facilities operating by the State of Oregon or any political subdivision thereof, the commission shall take into consideration the amount of funds derived from taxation appropriated to such facility. Nothing in this section shall be construed to limit such facility's right to establish rates sufficient to eliminate the necessity for taxation for operational funds.

(5) In the interest of promoting the most efficient and effective use of health care facilities, the commission may consider alternative methods of rate determination and payment of an experimental nature that may be in the public interest and consistent with the purposes of ORS 441.055 and 441.415 to 441.480.

[1973 c.837 s.10]

441.470 Cooperation in health planning. The commission shall consider the policies and advice of the Comprehensive Health Planning Authority with respect to general policies, rules and programs.

[1973 c.837 s.11]

441.475 Executive secretary; personnel; contracts for services. (1) The executive secretary of the commission shall be in the unclassified service and shall be appointed by the commission.

(2) The executive secretary may employ such other staff necessary to carry out the functions of the commission, prescribe their duties and fix their compensation, subject to applicable provisions of the State Merit System Law.

(3) The commission may contract for or procure on a fee or part-time basis, or both,

such technical or professional services as may be necessary to carry out its duties, subject to applicable legal limitations.

[1973 c.837 s.5]

441.480 Civil penalty for failure to file financial records and reports. (1) Any health care facility that fails to file the financial records and reports as required in ORS 441.440 may be subject to a civil penalty.

(2) The commission shall adopt a schedule of penalties which shall not exceed \$100 per day of violation determined by the severity of the violation.

(3) Any penalty imposed under this section shall become due and payable when the facility incurring the penalty receives a notice in writing from the executive secretary of the commission. The notice shall be sent by registered or certified mail and shall include a reference to the statute violated, a statement of the violation, a statement of the amount of the penalty imposed and a statement of the facility's right to request a hearing. The facility to whom the notice is addressed shall have 20 days from the date of mailing the notice to make written application for a hearing. All hearings shall be conducted as provided in ORS chapter 183 for a contested case.

(4) Unless the amount of the penalty is paid within 10 days after the order of the commission becomes final, the order shall constitute a judgment and may be filed with the county clerk in the county where the facility is located. The clerk shall thereupon record the name of the facility incurring the penalty and the amount of the penalty in the judgment docket. The penalty provided in the order so docketed shall become a lien upon the title of the real property held by the facility. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission considers proper and consistent with the public health and safety.

[1973 c.837 s.12]

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

441.510[Renumbered 441.810]

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

FINANCING OF HOSPITAL 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) "Authority" means any public authority organized or existing pursuant to ORS 441.525 to 441.595.

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

(3) "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 inpatient care facility subject to the licensing and supervision requirements of this chapter.

(4) "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 s.2]

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.

[1973 c.153 s.1]

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 term of service. At least one director shall also be a member of the governing body.

(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. It shall continue in existence so long as it has revenue bonds or other obligations outstanding for which repayment provision has not been made and may be dissolved at any time thereafter by action of the governing body or its successors.

[1973 c.153 s.3]

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 and serve at the pleasure 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 s.4]

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 s.5]

441.550 General powers of authority.

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 this chapter 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 enter into contracts, leases and other undertakings in its own name.
- (9) To adopt and amend ordinances and resolutions.

[1973 c 153 s 6]

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 and 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 voters 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 bank or trust company 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 invest-

ments 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 s.7]

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 s 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 s 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 s 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 s 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 income 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 s 12]

441.585 Disposition of assets on dissolution. 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 s.13]

441.590 Authority of 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 198.010 to 198.990, 288.320 and 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 s 14]

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 s 15]

CIVIL PENALTIES

441.705 Definition of "person" for ORS 441.705 to 441.745. As used in ORS 441.705 to 441.745, "person" means a licensee under this chapter, or a person whom the administrator finds should be so licensed but is not, but does not include any employe of such licensee or person.

[1975 c.328 s.9]

Note: 441 705 to 441 745 were not added to and made a part of ORS chapter 441, or any series therein, by legislative action

441.710 Civil penalties; when imposed. (1) In addition to any other liability or penalty provided by law, the Administrator of the Health Division 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 this chapter for a long term care facility, as defined in paragraph (b) of subsection (1) of ORS 441.005.

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

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

(2) A civil penalty may not be imposed under this section unless a violation is found on two consecutive surveys of the long term care facility. The administrator 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 administrator.

[1975 c 328 s 1]

Note: See note under 441 705

441.715 Schedule of civil penalties. After public hearing, the Administrator of the Health Division by rule shall adopt a schedule establishing the civil penalty that may be imposed under ORS 441.710. However, the civil penalty may not exceed \$500 for each violation, and may not exceed \$2,000 with respect to a single long term care facility within any three-month period.

[1975 c 328 s 2]

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 Administrator of the Health Division considers proper and consistent with the public health and safety.

[1975 c.328 s.3]

Note: See note under 441 705

441.725 Factors considered in imposing penalties. In imposing a penalty pursuant to the schedule adopted pursuant to ORS 441.705 to 441.745, the Administrator of the Health Division shall consider the following factors:

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

(2) Any prior violations of statutes or rules pertaining to long term care facilities.

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

(4) The immediacy and extent to which the violation threatens the health, safety and well-being of the patient.
[1975 c.328 s.4]

Note: See note under 441.705.

441.730 Notice; application for hearing. (1) A civil penalty may not be imposed under ORS 441.710 until the person incurring the penalty is served with notice as in a contested case under ORS 183.415. The notice shall include a concise description of the violation and a statement of the amount of the proposed penalty.

(2) If the person to, or upon, whom the notice is mailed or served makes written application for a hearing before the administrator within 10 days after the notice is mailed or served, the division shall provide notice and hearing as in a contested case under ORS 183.310 to 183.500.
[1975 c.328 s.5]

Note: See note under 441.705.

441.735 Order assessing penalty. If the person notified fails to request a hearing within the time specified in ORS 441.730, or if after a hearing the person is found to be in violation of a license, rule or order listed in subsection (1) of ORS 441.710, an order may be entered by the division assessing a civil penalty.
[1975 c.328 s.6]

Note: See note under 441.705.

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 s.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 s.8]

Note: See note under 441 705

MISCELLANEOUS

441.810 Access to hospital records. Any party legally liable or against whom a claim is asserted for compensation or damages for injuries may examine and make copies of all records of any hospital in reference to and connected with the hospitalization of the injured person.
[Formerly 441 510]

441.815 Smoking of tobacco in certain hospital rooms prohibited. No visitor to a hospital, as defined in ORS 441.005, shall smoke any cigar, cigarette or tobacco in any form in any room of a hospital in which more than one patient is accommodated.
[Formerly 441.515]

PENALTIES

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

(2) Violation of ORS 441.815 is a misdemeanor.

(3) Any person who wilfully prevents, interferes with, or attempts to impede in any way the work of any duly authorized representative of the Health Division in the lawful carrying out of the provisions of subsection (1) of ORS 441.087 shall be guilty of a Class C misdemeanor.
[Subsection (2) enacted as 1971 c 166 s.2, subsection (3) enacted as 1975 c.294 s.4]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Thomas G Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law
Done at Salem, Oregon,
October 1, 1975.

Thomas G Clifford
Legislative Counsel