

Chapter 442

1977 REPLACEMENT PART

Health Planning

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CROSS REFERENCES

Administrative procedures and rules of state agencies,
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Discrimination prohibited, 30.670
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442.005 [1955 c.533 §2; 1973 c.754 §1; repealed by 1977 c. 717 §23]

442.010 [Amended by 1955 c.533 §3; 1971 c.650 §20; repealed by 1977 c.717 §23]

ADMINISTRATION

442.015 Definitions. As used in ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450, unless the context requires otherwise:

(1) "Affected persons" means each person or agency entitled as of right to a hearing before the state agency, or named or admitted as a party, and has the same meaning as given to "party" in subsection (5) of ORS 183.310.

(2) "Area" means a health service area designated in accordance with the Federal Act.

(3) "Clinical service" means any service provided within a health care facility, directly relating to the course of a patient's illness or disease, which may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

(4) "Council" means the Oregon Statewide Health Coordinating Council.

(5) "Department" means the Department of Human Resources of the State of Oregon.

(6) "Develop" means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable state law, in relation to the offering of such a health service.

(7) "Division" means the Health Division of the Department of Human Resources.

(8) "Federal Act" means the National Health Planning and Resources Development Act of 1974, Public Law 93-641 enacted by the Senate and House of Representatives of the United States of America and approved January 4, 1975, and includes regulations issued thereunder as of July 26, 1977.

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

(10) "Health care consumers" and "health care providers" have the meaning given in the Federal Act.

(11) "Health care facility" has the meaning given the term in the Federal Act, and includes but is not limited to:

(a) A "hospital" 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) A "long term care facility" 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. "Long term care facility" includes the terms "skilled nursing facility" and "intermediate care facility," but such definition shall not be construed to include facilities licensed and operated pursuant to ORS 443.210 to 443.330. Such definitions shall include:

(A) A "skilled nursing facility" whether an institution or a distinct part of an institution, which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(B) An "intermediate care facility" which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services above the level of room and board which can be made available to them only through institutional facilities.

(c) A "special inpatient care facility" 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.

(d) An establishment furnishing primarily domiciliary care is not a "health care facility."

(12) "Health maintenance organization" has the meaning given the term in the Federal Act.

(13) "Health systems agency" means an Oregon corporation designated to serve as a health systems agency as that term is used in the Federal Act.

(14) "Health services" means clinically related diagnostic treatment or rehabilitative services, and includes alcohol or drug abuse and mental health services.

(15) "Institutional health services" means health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

(16) "New health service" has the meaning given the term "new institutional health service" in the Federal Act and includes:

(a) The construction, development or other establishment of a new health care facility.

(b) Any capital expenditure by or on behalf of a health care facility or health maintenance organization in excess of \$150,000 but not including site acquisitions regardless of cost, acquisition of health care facilities existing on July 26, 1977, nor the costs of plans and studies for a new health service which costs are \$150,000 or less.

(c) A substantial change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds by more than 10 beds or more than 10 percent of total bed capacity, as defined by the state agency, whichever is less, within a two-year period or the relocation of beds from one physical facility or site to another.

(d) New health services, except home health services, which are offered having a projected or planned expenditure in excess of \$150,000, including capital expenditures, and 12-month operating expenditures in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization either directly or indirectly by contract within the 12-month period prior to the time such health services would be offered.

(17) "Offer" means that the health care facility or health maintenance organization holds itself out as capable of providing, or as

having the means for the provision of, specified health services.

(18) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state, or a political subdivision or instrumentality (including a municipal corporation) of a state.

(19) "Secretary" means the Secretary of Health, Education and Welfare.

(20) "State agency" means the State Health Planning and Development Agency having the functions and authorities as established by ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 and the Federal Act. [1977 c.751 §1]

442.020 [Amended by 1955 c.533 §4; 1973 c.754 §2; repealed by 1977 c.717 §23]

442.025 Findings and policy. (1) The Legislative Assembly finds that:

(a) The achievement of equal access to quality health care at a reasonable cost is a priority of the State of Oregon.

(b) Methods of delivering health care are not uniformly effective, and health care facilities and manpower are not well distributed.

(c) The cost of health care, particularly of hospital stays, has increased in an uncontrollable and inflationary manner.

(d) Inadequate incentives exist for the use of appropriate alternative levels of health care, and for the substitution of ambulatory and intermediate care for inpatient hospital care.

(e) Health care providers and consumers should play an active role in developing health policy at all levels.

(f) Health care consumers should be instructed on methods for effective use of available health services.

(2) It is the purpose of ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 to establish area-wide and state planning for health services, manpower and facilities in light of the findings of subsection (1) of this section and in furtherance of health planning policies of this state.

[1977 c.751 §2]

442.030 [Amended by 1955 c.533 §5; 1961 c.316 §8; 1967 c.89 §4; repealed by 1977 c.717 §23]

442.035 Oregon Statewide Health Coordinating Council; members' qualifications; terms; officers; meetings; compensation and expenses. (1) There is established the Oregon Statewide Health Coordinating Council to serve as the policy-making body responsible for health planning pursuant to ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 and the Federal Act.

(2) The members of the council shall be residents of the State of Oregon and shall be appointed by the Governor, subject to the following:

(a) The council shall have 18 representatives appointed from lists of at least nine nominees submitted to the Governor by each of the health systems agencies designated for health service areas which lie in whole or part within the state. Each health systems agency shall be entitled to six representatives on the council, not less than one-half of whom shall be consumers of health care, including government officials, who are not providers of health care.

(b) The Governor may appoint up to 13 persons, including state officials, public elected officials and other representatives of governmental authorities within the State of Oregon, to serve on the council as he deems appropriate; and a majority of the persons appointed shall be consumers of health care who are not providers of health care.

(c) The membership of the Oregon Statewide Health Coordinating Council shall broadly represent the social, economic, linguistic and racial population of the state.

(d) Not less than one-third of the providers of health care who are members of the council shall be direct providers of health care as defined in section 1531 (3) of the Federal Act.

(e) The membership of the Oregon Statewide Health Coordinating Council shall be at least 51 percent and not more than 60 percent consumers.

(f) When there are two or more hospitals or other health care facilities of the Veterans Administration within the state, the council shall also include as an ex officio, nonvoting member an individual whom the Chief Medical Director of the Veterans Administration designates to represent such facilities.

(g) Staff members of health systems agencies shall not be eligible for membership on the council.

(h) Except for state agency representatives so designated by the Governor:

(A) Members shall be appointed to three-year terms, except the first members appointed shall have staggered terms of one, two or three years determined by lot.

(B) No person shall serve more than two consecutive terms.

(i) Designated state agency members shall serve by virtue of office and the pleasure of the Governor.

(3) All appointed members of the council shall serve at the Governor's pleasure.

(4) Members shall select a chairperson and a vice chairperson and an executive committee from among themselves. The executive committee shall include the chairperson and vice chairperson. A majority of the members of the executive committee shall be consumers of health care. The membership shall reflect to a reasonable extent the composition of the total membership of the council. The executive committee shall be empowered with those duties and powers as the council shall determine.

(5) The council shall meet at least quarterly.

(6) Members are entitled to compensation and expenses as provided in ORS 292.495.

(7) Vacancies on the council shall be filled by appointments of the Governor for the unexpired term. If a vacancy is in a position occupied by a nominee of a health systems agency, the Governor shall request such health systems agency to submit up to three names to him to fill the vacancy. Such nominations must qualify to fill the same general category of representation as was held by the former member in order to maintain the same council membership composition.

[1977 c.751 §3]

442.040 [Amended by 1955 c.533 §6; 1973 c.754 §3; repealed by 1977 c.717 §23]

442.045 Council duties and powers. The Oregon Statewide Health Coordinating Council shall perform the following functions:

(1) Review annually and coordinate the health systems plans and the annual implementation plan of each health systems agency within the state.

(2) Annually prepare, review, revise as necessary, and adopt a state health plan which shall be made up of the health systems plans of the health systems agencies and such state agency health plans as the council deems

appropriate. The plan, as found necessary by the council, may contain revisions of the health systems plans to achieve their appropriate coordination or to deal more effectively with state-wide health needs. In the preparation and revision of the state health plan, the council shall review and consider the preliminary state health plan submitted by the State Health Planning and Development Agency.

(3) Review annually the budget of each health systems agency and report to the secretary.

(4) Review applications submitted by the health systems agencies for grants.

(5) Advise the State Health Planning and Development Agency generally on the performance of its functions.

(6) Review annually and approve or disapprove any state plan and any application, and any revision of a state plan or application, submitted to the Secretary of Health, Education and Welfare as a condition to the receipt of any funds under allotments made to states under the Federal Act, the Community Mental Health Centers Act or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970.

(7) Provide such reports to the Secretary of Health, Education and Welfare as may be required.

(8) Perform all other functions authorized or required by the Federal Act.

[1977 c.751 §4]

442.050 [Amended by 1957 c.697 §3; 1969 c.535 §2; 1973 c.754 §4; repealed by 1977 c.717 §23]

442.053 [1955 c.533 §7; 1973 c.754 §5; repealed by 1977 c.717 §23]

442.055 [1955 c.533 §8; repealed by 1973 c.754 §8]

442.057 Council subcommittees and advisory committees. The Oregon State-wide Health Coordinating Council may establish subcommittees and may appoint advisory committees to advise it in carrying out its duties under ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450. Members of advisory committees shall not be eligible for compensation but shall be entitled to receive actual and necessary travel and other expenses incurred in the performance of their official duties.

[1977 c.751 §15]

442.060 [Amended by 1963 c.92 §1; repealed by 1977 c.717 §23]

442.070 [Amended by 1961 c.316 §9; 1967 c.89 §5; repealed by 1971 c.734 §21]

442.075 [1971 c.734 §58; repealed by 1973 c.754 §6 (442.076 enacted in lieu of 442.075)]

442.076 [1973 c.754 §7 (enacted in lieu of 442.075); repealed by 1977 c.717 §23]

442.080 [Repealed by 1977 c.717 §23]

442.085 State Health Planning and Development agency; functions; director; dismissal procedure; appointment of staff.

(1) There is established a State Health Planning and Development Agency whose responsibilities include:

(a) Providing staff services to the council and any subcommittee or task force of the council in the conduct and performance of its duties and responsibilities. Such staff services shall include routine administrative support and shall be provided under the policy direction of the council;

(b) Conducting the administrative and regulatory functions necessary to implement the policies and directives adopted by the council pursuant to ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 and the Federal Act; and

(c) Performing those other functions outlined in ORS 442.095 and in the Federal Act.

(2) The state agency shall be under the supervision of a director appointed by the Governor. The director shall:

(a) Be in the unclassified service.

(b) Be responsible to the council pursuant to subsection (1) of this section.

(c) Serve at the pleasure of the Governor. However, if two-thirds of the members of the council vote to recommend dismissal of the director, the Governor shall conduct a hearing to determine whether cause exists for that dismissal and may dismiss the director.

(3) Subject to the State Merit System Law, the director shall appoint necessary staff, including those for a section for planning and for a section for development.

[1977 c.751 §5]

442.090 [Repealed by 1955 c.533 §10]

442.095 State Agency duties. The State Health Planning and Development Agency shall perform the following functions:

(1) Administer the health planning activities of the council pursuant to ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 and the

Federal Act, and coordinate the health planning activities of state government.

(2) Prepare, review and revise as necessary a preliminary state health plan which shall be made up of the health systems plans of the health systems agencies in the state.

(3) Assist the council in the review of the state medical facilities plan and in the performance of its functions generally.

(4) Serve as the designated planning agency of the state for purposes of section 1122 of the federal Social Security Act if the state has made an agreement pursuant to that section and administer the state certificate of need program which applies to new institutional health services proposed to be offered or developed in the state.

(5) After consideration of recommendations submitted by health systems agencies respecting new institutional health services proposed to be offered in the state, make findings as to the need for such services.

(6) Review on a periodic basis, but not less often than every five years, all institutional health services being offered in the state and, after consideration of recommendations submitted by health systems agencies in the state respecting the appropriateness of such services, make public the findings.

(7) Exercise the authority arising out of the policy decisions of the council.

(8) Provide such reports to the Secretary of Health, Education and Welfare as may be required.

[1977 c.751 §6]

442.100 Administration of law regarding certificates of need for facilities. The State Health Planning and Development Agency shall administer ORS 442.320, 442.330 and 442.340 relating to certificates of need.

[1977 c.751 §7]

442.105 Contracts for administration of laws; terms and conditions. (1) In the administration of the provisions of ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450, the state agency is authorized to contract with a health systems agency and any other governmental or private agency which the state agency deems necessary. The state agency shall reimburse such contracting agency, from funds authorized or appropriated to it for purposes of ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420,

442.435 and 442.450, in a manner consistent with state law.

(2) The state agency shall prescribe the manner and form of performance which it shall require of contractors pursuant to subsection (1) of this section. Such contractors shall agree to accept such performance standards as the state agency shall prescribe for purposes of this section.

[1977 c.751 §38]

442.110 State agency as agency to apply for and receive federal funds. (1) The State Health Planning and Development Agency is hereby designated as the state agency to apply to and receive from the Federal Government or any agency thereof such grants for the administration of the Federal Act and including grants for health care facility construction or remodeling.

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

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

(b) Administer plans for those purposes. Such plans shall be made state wide in application in so far as reasonably feasible, possible or permissible, and shall be so devised as to meet the approval of the Federal Government or any of its agencies, not inconsistent with the laws of the state.

[Formerly 431.250 (3), (4)]

HEALTH SYSTEMS AGENCIES

442.150 Health systems plans to be submitted to state agency. All health systems plans and annual implementation plans shall be submitted for review and possible modification to the State Health Planning and Development Agency.

[1977 c.751 §10]

442.155 Health systems agencies; functions. (1) Health systems agencies shall be designated by the secretary to serve three specified areas of the state.

(2) Health systems agencies shall:

(a) Establish, annually review and amend as necessary a health systems plan which shall be a detailed statement of goals describing a healthful environment and health systems in the area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care at reasonable costs

for all residents of the area and which are responsive to the unique needs and resources of the area.

(b) Establish, annually review and amend as necessary an annual implementation plan which describes objectives which will achieve the goals of the health systems plan and priorities among the objectives.

(c) Implement its health systems plan and annual implementation plan pursuant to the Federal Act.

(d) Assist the Oregon Statewide Health Coordinating Council and the State Health Planning and Development Agency in evaluating present and planned health care facilities and programs.

(e) Perform all other functions authorized or required by the Federal Act.

[1977 c.751 §11]

442.160 Health systems agency membership. The health systems agency shall have a health care consumer majority and include health care provider and locally elected officials. Membership must comply with the requirements of the Federal Act.

[1977 c.751 §12]

442.165 Grant application procedure requiring federal approval. For grant applications that require approval or disapproval by a health systems agency under the Federal Act, the following procedure applies:

(1) Upon receipt of the grant application, the health systems agency shall send a copy of the application and all accompanying material to the state agency for consideration by the Oregon Statewide Health Coordinating Council.

(2) Within 90 days after receipt of the completed application, the health systems agency shall inform the State Health Planning and Development Agency and the Secretary of Health, Education and Welfare of its decision either approving or disapproving of the application. No decision within the 90 days constitutes approval of the application.

(3) Within the 90-day period described in subsection (2) of this section, the state agency shall determine the conformity of the grant application to the state health plan and shall notify the health systems agency of the conformity or nonconformity with the state plan. In case of finding of nonconformity, the state agency shall refer the application to the Oregon Statewide Health Coordinating Council and notify the grant applicant. If the council recommends disapproval of the appli-

cation, it shall notify the health systems agency and the secretary within the 90-day period.

(4) If the application is disapproved by the health systems agency or the council, the applicant or any affected party who participated in the proceedings before the agency or the council may appeal to the secretary.

(5) A request for reconsideration must be received within 30 days of the decision. The health systems agency shall hold a reconsideration hearing within 30 days of receipt of the request for reconsideration.

[1977 c.751 §13]

442.170 Grant application procedure requiring council approval. (1) For grant applications that require approval or disapproval by the Oregon Statewide Health Coordinating Council under the Federal Act, within 90 days of the receipt of any such completed application, the council shall notify the secretary and the applicant and the health systems agency of its approval or disapproval of the application.

(2) The applicant or any affected party who participated in the proceedings before the council may appeal the decision of the council to the secretary.

(3) Upon receipt of a grant application, the council shall send a copy of the application and all accompanying material to the health systems agency.

(4) Within 90 days after receipt of the application, the health systems agency shall determine the conformity of the grant application to their health systems plan and annual implementation plan, and shall notify the council of the conformity or nonconformity with their plan or plans. In case of nonconformity, the health systems agency shall notify the applicant and secretary.

(5) A request for reconsideration must be received within 30 days of the decision. The council shall hold a reconsideration hearing within 30 days of receipt of request for reconsideration.

[1977 c 751 §14]

CERTIFICATES OF NEED FOR HEALTH SERVICES

442.300 Purpose of ORS 441.015 to 441.087 and 442.300 to 442.340. The purpose of ORS 441.015 to 441.087, subsection (3) of 441.990 and 442.320, 442.330 and 442.340 and this section is to provide for the development,

establishment and enforcement of basic standards:

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

(2) For the construction, maintenance and operation of health care facilities and health maintenance organizations that, in the light of existing knowledge, will insure treatment that is recognized and authorized by the laws of this state to be safe treatment.

[Formerly 441.010]

442.320 Certificate of need required for development of health service; application; fee; review. (1) Any governmental unit or person not excluded pursuant to ORS 441.065 and subsection (8) of 442.340, proposing to offer or develop a new health service shall obtain a certificate of need from the state agency prior to such offering or development.

(2) (a) The state agency shall adopt rules specifying criteria and procedures for making decisions as to the need for new health services.

(b) The state agency shall adopt rules providing for accelerated filing, accelerated review and approval of, or waiver of review of a proposed expenditure for repairs or replacement of plant or equipment, when determined by the state agency to be an emergency, or when the offering or development of a new health service is of a nonsubstantive nature.

(c) The state agency shall promulgate and adopt rules for substitute review procedures as may be necessary.

(d) A series of projects having a clinical health service related linkage, which in the aggregate exceeds \$150,000 over the whole project period, shall not be offered or developed without a certificate of need having first been obtained.

(e) The state agency shall promulgate and adopt rules for substitute review procedures, or waiver of review of any proposed expenditure in excess of \$150,000 by, or on behalf of, a health care facility or health maintenance organization, which expenditure is for plans or studies for a new health service. Determinations arising from a substitute review procedure or waiver of review shall not be considered as fulfilling any of the requirements for obtaining a certificate of need.

(3) (a) An applicant for a certificate of need shall apply to the state agency on forms provided for this purpose which forms shall

include, at a minimum, such information specified in federal law as the agency and health systems agency needs.

(b) An applicant shall pay a fee prescribed as provided in this section. Subject to the approval of the Executive Department, the state agency shall prescribe application fees, based on the complexity and scope of the proposed project, not to exceed \$3,000.

(c) In the event a public hearing is held pursuant to ORS chapter 183, the state agency may impose a fee equally on the parties to the hearing. In no case shall the fees assessed pursuant to this paragraph exceed the costs of the public hearing incurred by the state agency, except as provided in paragraph (d) of this subsection.

(d) Notwithstanding the provisions of paragraphs (b) and (c) of this subsection, the state agency and the parties to the public hearing held pursuant to ORS chapter 183 shall share equally in the cost of preparation of a transcript of record, if any.

(e) Fees derived under this section shall be continuously appropriated to the state agency and may be expended by the state agency for the administration of ORS 441.050 and 442.320, 442.330 and 442.340.

(4) The state agency shall adopt rules governing the reporting, by all persons or governmental units not excluded pursuant to ORS 441.065 and subsection (8) of 442.340, of their intent to offer or develop a new health service during the succeeding year, and the general nature of such new health service. Such a report shall not be considered an application for a certificate of need, and shall be submitted to the state agency and respective health systems agency.

(5) The state agency may, in order to consider an application with other applications concerning proposed new health services for the same area, delay consideration of an application for a reasonable time not to exceed 90 days.

(6) The state agency shall promulgate and adopt rules governing procedures for concurrent or joint review, to the extent practicable, of applications for certificates of need, between the state agency and respective health systems agencies.

[Formerly 441.090]

442.325 Health maintenance organization certificates of need; exempt activities; certain licensing and regulation subject to insurance laws; policy to encour-

age health maintenance organizations. Notwithstanding any other provision of ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450:

(1) A certificate of need shall be required for the development or establishment of any new health maintenance organization formed after July 26, 1977.

(2) Any activity of a health maintenance organization which does not involve the direct delivery of health services, as distinguished from arrangements for indirect delivery of health services through contracts with providers, shall be exempt from certificate of need review.

(3) Nothing in ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 applies to any decision of a health maintenance organization involving its organizational structure, its arrangements for financing health services, the terms of its contracts with enrolled beneficiaries or its scope of benefits.

(4) With the exception of certificate of need requirements, when applicable, the licensing and regulation of health maintenance organizations shall be controlled by ORS 750.005 to 750.065 and statutes incorporated by reference therein.

(5) It is the policy of ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 to encourage the growth of health maintenance organizations as an alternative delivery system and to provide the facilities for the provision of quality health care to the present and future members who may enroll within their defined service area.

(6) (a) It is also the policy of ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450 to consider the special needs and circumstances of health maintenance organizations. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new health service from the existing providers in the area

that are not health maintenance organizations.

(b) The agency shall issue a certificate of need for beds, services or equipment to meet the needs or reasonably anticipated needs of members of health maintenance organizations when beds, services or equipment are not available from nonplan providers.

[1977 c.751 §56]

422.330 Utilization of existing services and facilities; effect of conflict with federal laws. (1) In the administration of ORS 442.320, 442.330, 442.340 and 442.350, consideration shall be given to the efficiency of the utilization of an existing health service or facility which is, or will be, serving the area.

(2) If any part of ORS 441.015 to 441.087, 442.320, 442.330 and 442.340 to 442.350 is found to be not in conformity with the federal Social Security Act, as amended, the National Health Planning and Resources Development Act of 1974, and the regulations adopted under those Acts as of July 26, 1977, the conflicting portion, clause or part of ORS 441.015 to 441.087, 442.320, 442.330 and 442.340 to 442.350 is inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of ORS 441.015 to 441.087, 442.320, 442.330 and 442.340 to 442.350.

[Formerly 441.092]

442.335 Review of certificate of need applications; limitation on time for review; notice to council; appeal. (1) The State Health Planning and Development Agency shall be the decision-making authority for the purposes of certificates of need.

(2) Each health systems agency shall review all certificate of need applications in its designated health services area and send its recommendation to the state agency, which shall make the final decision.

(3) (a) Except as provided in paragraph (b) of this subsection and subsection (5) of ORS 442.320 no more than 90 days shall elapse from the time a complete application for a certificate of need is received by the state agency to the time when the state agency makes its decision.

(b) The state agency with written agreement of the applicant for a certificate of need approval may extend the time period as specified in paragraph (a) of this subsection.

(4) At the same time that the State Health Planning and Development Agency notifies

the applicant of a certificate of need and the appropriate health systems agency of its decision, it shall notify the Oregon Statewide Health Coordinating Council.

(5) If the decision of the state agency is not acceptable to the applicant, the health systems agency or affected parties, an appeal may be filed with an appeals board pursuant to ORS 442.360.

(6) Notice of an appeal must be filed with the state agency and the appeals board within 30 days after the decision of the state agency.

[1977 c.751 §8]

442.340 Issuance of certificates of need; criteria; reconsideration and review of determinations; revocation or rescission of certificate; application of statutes. (1) The state agency shall issue a certificate of need if the need is confirmed by an evaluation of the criteria in paragraphs (a) to (j) of subsection (2) of this section.

(2) The health systems agency may review and make recommendations to the agency respecting the need for new health services proposed to be offered or developed in the area of such health systems agency. In making determinations regarding an application for a certificate of need, the state agency and health systems agency shall make specific findings regarding:

(a) The relationship of new health services being reviewed, to such of the following plans as are in existence at the time of review:

(A) State health plan, and state medical facilities plan as approved by the Oregon Statewide Health Coordinating Council.

(B) Health systems plan and annual implementation plan of the respective health systems agency.

(b) The relationship of new health services reviewed to the long-range development plan, if any, of the person providing or proposing such services.

(c) The availability, adequacy and conformity to state standards of existing health services which are currently serving the area.

(d) The need that the population of the area served or to be served by such new health services has for such health services.

(e) The availability of less costly alternatives of equal quality, or more effective methods of providing such new health services.

(f) The relationship of new health services reviewed to the existing health care system of

the area in which such health services are provided or proposed to be provided.

(g) In the case of new health services proposed to be provided, the availability of resources for the provision of such health services and the availability of alternative uses for such resources for the provision of other health services.

(h) The special needs and circumstances of those entities which provide a substantial portion of their health services or resources, or both, to individuals not residing in the areas in which the entities are located or in adjacent areas. Such entities may include medical and other health professions' schools, multidisciplinary clinics, specialty centers, facilities established or operated by a religious body or denomination to meet the needs of members of such religious body or denomination for care and treatment in accordance with their religious or ethical convictions, and such other entities as the secretary may by regulation prescribe.

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

(j) The immediate and long-term financial impact of the proposal.

(3) In any case in which the specifically enumerated criteria are not judged pertinent by the state agency or health systems agency, the state agency or health systems agency shall so state and give the reasons therefor.

(4) Notwithstanding any appeal pursuant to subsection (6) of this section, the applicant, health systems agency, or any person affected by a decision of the state agency may, for good cause shown, request the state agency to reconsider such decision.

(5) If the state agency makes a decision inconsistent with a recommendation made by a health systems agency, the state agency shall submit to such health systems agency a written, detailed statement of the reasons for the inconsistency.

(6) (a) An applicant, health systems agency, or any affected person who is dissatisfied with the decision of the state agency, is entitled to:

(A) A reconsideration hearing before the state agency; and

(B) An appeal before the appeals board pursuant to ORS 442.360, whose decision shall

be final subject to judicial review pursuant to ORS chapter 183.

(b) In any proceeding brought by an applicant or health systems agency challenging a state agency decision under this subsection, the state agency shall follow procedures consistent with ORS 244.050, 431.250, 431.625, 441.015 to 441.087, 442.015 to 442.420, 442.435 and 442.450, the Federal Act and the provisions of ORS chapter 183 relating to a contested case.

(7) 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 agency finds that a health care facility or health maintenance organization is offering or developing a new health service that is not within the scope of the certificate of need, the state agency may limit the new health service to the scope of the issued certificate of need, reconsider the application, or take action as provided in ORS 442.345.

(8) The provisions of ORS 441.015 to 441.087, 442.320, 442.330 and 442.340 do not apply to:

(a) A sole or group medical practice that is not within the definitions of "health care facility," "new health service," or "health maintenance organization" in ORS 442.015.

(b) A new health service planned to be developed or offered having a projected or planned expenditure of \$150,000 or less for a budget period of 12 consecutive months.

(c) A change in bed capacity of a "health care facility" or "health maintenance organization" which increases the total number of beds by no more than 10 beds or no more than 10 percent of total bed capacity as defined by the state agency, whichever is less, over a two-year period.

(9) (a) A certificate of need issued pursuant to this section shall be automatically canceled 12 months from the date of issuance unless:

(A) Extended pursuant to paragraph (b) of this subsection;

(B) The new health service covered by such certificate is substantially implemented; or

(C) When the expiration date shall coincide with completion of the new health service for which it was issued.

(b) For good cause shown, the state agency may grant extensions of time, not to exceed

six months each, where the new health service for which the certificate was issued has not been substantially implemented.

(10) The state agency may with respect to any approved certificate of need, impose such reporting requirements as are necessary to monitor for substantial implementation and to determine that the project conforms to the scope and cost of the approved application.

(11) A certificate of need shall not be bought, sold nor transferred either on its own or as part of a facility or health service purchase, sale or transfer.

[Formerly 441.095]

442.345 Injunctive relief for violation of provisions regarding certificate of need. In addition to any other remedy provided by law, whenever it appears that any person or governmental unit is engaged in or is about to engage in any acts which constitute a violation of ORS 442.320, 442.330, 442.340, or any rule or order issued by the state agency, the state agency may institute proceedings in the circuit courts to enforce obedience to such statute, rule or order by injunction or by other processes, mandatory or otherwise.

[1977 c.751 §33]

442.350 Federal aid; disposition of funds received. (1) The state agency may apply for and receive from the secretary, or from the Treasury of the United States as directed by the secretary, such sums as are available for the purposes of ORS 442.320, 442.330, 442.340 and this section, implementing the federal law, and functions set forth in agreements between the state agency and the secretary.

(2) Any sums appropriated by the secretary, or by the Treasury of the United States, for the purpose of constructing or remodeling health care facilities shall be deposited by the state agency with the State Treasurer. These funds shall be credited to the Health Resources and Development Account which is hereby created, are continuously appropriated and shall be used solely for the purpose of making grants pursuant to Title XVI of the Federal Act.

Expenditures for purposes of this section shall be confined solely to such funds as may be made available by the secretary.

[Formerly 441.140]

442.360 Certificate of Need Appeals Board; members, terms, officers, compen-

sation and expenses. (1) The Certificate of Need Appeals Board is established. The board shall serve as the appeals body on issues involving certificates of need as provided in ORS 442.320, 442.330 and 442.340.

(2) The board shall consist of eight members appointed as follows:

(a) Three consumer members representing the health systems agencies, one chosen by the governing body of each health systems agency.

(b) Three members appointed by the Governor representing the state-at-large, two of whom shall be consumers of health care and one of whom shall be a direct provider of health care.

(c) Two direct providers chosen by the council, one of whom shall be a physician licensed under ORS chapter 677 who is participating in a private practice and one of whom is an administrator of a hospital as defined in paragraph (a) of subsection (1) of ORS 441.005 (1975 Replacement Part).

(3) Members shall serve for a term of three years, and are eligible for reappointment. Any vacancy shall be filled in the same manner as the original appointment as described in subsection (2) of this section.

(4) Members are entitled to compensation and expenses as provided in ORS 292.495.

(5) Members shall select a chairperson and vice chairperson with such functions as the board may determine. The board shall meet on the call of the chairperson as necessary to hear appeals.

[1977 c.751 §9]

HEALTH CARE FACILITY COST REVIEW

442.400 "Health care facility" defined. As used in ORS 441.055 and 442.400 to 442.450, unless the context requires otherwise, "health care facility" or "facility" means such facility as defined by subsection (1) of ORS 441.005 (1975 Replacement Part) and includes all publicly and privately owned and operated health care facilities, but does not include facilities described in ORS 441.065.

[Formerly 441.415]

442.405 Legislative findings and policy. The Legislative Assembly finds that rising costs and charges of 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) That cost containment programs be established and implemented by health care facilities in such manner as to both enable and motivate such facilities to control rapidly increasing costs;

(2) To require health care facilities 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

(3) To encourage development of programs of research and innovation in the methods of delivery of institutional health care services of high quality with costs and charges reasonably related to the nature and quality of the services rendered.

[Formerly 441.420]

442.410 Health care facilities required to file budget and rate documents; effective date of rate increases; public inspection of rate schedules. (1) All health care facilities shall file with the state agency in such form or forms as the state agency may require by rule:

(a) Prospective budgets for fiscal years of such facilities beginning on and after the operative date of this section together with a plan of action to contain costs of such facility;

(b) A list of all rates required by rule of the state agency that are in effect as of July 26, 1977, and the beginning of each fiscal year thereafter; and

(c) With respect to fiscal years following the first fiscal year for which a budget and plan of action to contain costs has been filed as required in this section, a report in such form as the state agency may require by rule as to the effectiveness of the plan of action to contain such costs.

(2) Changes in filed rates, and additions of new rates for services, supplies or facilities not provided for at the time of the original filing, may be made by the health care facility by filing such amendment or addition with the state agency. No increase in rates becomes effective until the 30th day after having been filed with the state agency. Rates for new services or new facilities not provided for at the time of the original filing may become effective immediately upon filing. There shall be filed with any increase or addition in filed rates, justification for such increase or addition in such form as the state agency by rule may require.

(3) Each facility shall make a copy of its

current filed rates available, during ordinary business hours, for inspection by any person on demand.

[1977 c.751 §45]

442.415 Effect of service reductions on rates; markup on supplies and services; penalties not allowable in determining rates; determining reasonableness of rates. In connection with the filing of rates as required under ORS 442.410, 442.450 and this section:

(1) A finding by the state agency that any health care facility has reduced the content of a service without a compensating reduction in rates shall be considered as if such reduction in content of such service were an increase in rates subject to ORS 442.325, 442.410, 442.450, section 47, chapter 751, Oregon Laws 1977, and this section.

(2) Costs of supplies, materials or services furnished to and separately charged to patients of hospitals on the basis of a set percentage markup or a set professional fee need not be filed as a rate, but the percentage markup or set professional fee shall be so filed. Any change in such percentage markup or set professional fee shall be considered as a change in rate. The state agency shall provide by rule for the filing of such percentage markup or set professional fee.

(3) Amounts incurred as civil penalties under any law of this state shall not be allowable as costs for purposes of rate determination, nor for reimbursement by a third party payor.

(4) In considering the reasonableness of rates, the state agency shall consider the adequacy and effectiveness of the health care facility's plan of action to contain costs.

[1977 c.751 §46]

442.420 Application for financial assistance; financial analysis and investigation authority; rules. (1) Consistent with the policy directive of the Oregon Statewide Health Coordinating Council, the State Health Planning and Development Agency 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) In cooperation with the appropriate health systems agency and the appropriate professional standards review organizations, the state agency 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 442.400 to 442.450 and sources of public and private financing of financial requirements of such facilities.

(3) The state agency may also:

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

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

(c) Exercise, subject to the limitations and restrictions imposed by ORS 441.055 and 442.400 to 442.450, all other powers which are reasonably necessary or essential to carry out the express objectives and purposes of ORS 441.055 and 442.400 to 442.450; and

(d) Adopt rules in accordance with ORS chapter 183 necessary in the state agency's judgment for carrying out the functions of the state agency.

[Formerly 441.435]

442.425 Agency's authority over accounting and reporting systems of facilities. (1) The state agency shall by rule specify one or more uniform systems of accounting and financial reporting, necessary to meet the requirements of ORS 441.055 and 442.400 to 442.450. 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 state agency'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 state agency. The state agency 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 state agency.

(2) Existing systems of accounting and reporting used by health care facilities shall be given due consideration by the state agency in carrying out its duty of specifying the systems of accounting and uniform reporting required by ORS 441.055 and 442.400 to 442.450. The state agency 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 state agency 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 442.400 to 442.450.

(4) The state agency 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 442.400 to 442.450, 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.

[Formerly 441.440]

442.430 Investigations; confidentiality of data. (1) Whenever a further investigation is considered necessary or desirable by the state agency to verify the accuracy of the information in the reports made by health care facilities, the state agency 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 442.400 to 442.450, the state agency 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 state agency.

[Formerly 441.445]

442.435 Investigation of facility financial status; cost review determinations; judicial review. (1) On and after July 26, 1977, the state agency may conduct such investigations as to determine to the satisfaction of the state agency that:

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

(b) The facility's gross revenues are reasonably related to the facility's gross costs; and

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

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

(3) When the state agency 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 Oregon Statewide Health Coordinating Council.

(4) If the state agency determines that rates charged by a facility or to be charged by a facility are unreasonable, the state agency shall cause such facility to be given written notice of such determination and provide for publication of such determination in such manner and in such media as the state agency considers necessary to give the public notice of such determination.

(5) A determination by the state agency that a rate or charge is unreasonable may be appealed as a contested case under ORS 183.480.

[Formerly 441.460]

442.440 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 state agency 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 state agency 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 state agency 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 state agency 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 state agency 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 442.400 to 442.450.

[Formerly 441.465]

442.445 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 442.425 may be subject to a civil penalty.

(2) The state agency 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 director of the state agency. 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 state agency 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 state agency considers proper and consistent with the public health and safety.

[Formerly 441.480]

442.450 Exemption from cost review regulations. The following are not subject to ORS 442.400 to 442.450:

(1) Physicians in private practice, solo or in a group or partnership, who are not employed by, or hold ownership or part ownership in, a health care facility; or

(2) Health care facilities described in ORS
441.065.
[1977 751 c.§55]

442.990 [Amended by 1955 c.533 §9; repealed by
1977 c.717 §23]

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, 1977.

Thomas G. Clifford
Legislative Counsel

