

Chapter 441

1979 REPLACEMENT PART

Health Care Facilities

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**LICENSING AND
SUPERVISION OF FACILITIES
AND ORGANIZATIONS**

441.005 [Amended by 1971 c.730 §1; 1973 c.840 §1; repealed by 1977 c.751 §57]

441.007 [1973 c.840 §2; repealed by 1977 c.751 §39]

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

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

(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 or health maintenance organization, as defined in ORS 442.015, in this state without a license.

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

441.020 Application; fees. (1) Licenses for health care facilities 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 441.015 to 441.063 and 442.300. License fees paid for the first year following July 26, 1977, shall be prorated to reflect the change in license period provided in subsection (2) of ORS 441.025.

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

(a) Less than 26 beds, the annual license fee shall be up to \$180.

(b) Twenty-six beds or more and less than 50 beds, the annual license fee shall be up to \$230.

(c) Fifty or more beds and less than 100, the annual license fee shall be up to \$400.

(d) One hundred beds or more and less than 200, the annual license fee shall be up to \$520.

(e) Two hundred or more beds, the annual license fee shall be up to \$640.

(5) For long term care facilities with:

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

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

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

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

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

(6) 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 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 at each location were separately licensed.

(8) Licenses for health maintenance organizations shall be obtained from the Insurance Commissioner pursuant to ORS 731.072. Amended by 1957 c.697 §1; 1971 c.650 §19; 1971 c.730 §5; 1973 c.840 §5; 1977 c.284 §4; 1977 c.751 §20a; 1979 c.696 §15]

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 §2; 1971 c.730 §6; 1973 c.840 §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 facility comply with ORS 441.015 to 441.063, 441.085,

441.087, 442.300, 442.320, 442.330 and 442.340 and the rules of the division provided that 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 479.215.

(2) Each license, unless sooner suspended or revoked, shall be renewable annually for the calendar year upon payment of the fee and approval by the division of an annual report containing such information as may be required by the state agency, as defined in ORS 442.015, in such form as the division prescribes by rule, provided that a certificate of noncompliance 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.

(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 or health maintenance organization that offers or proposes to develop a new health service, subject to ORS 442.320, unless a certificate of need has first been issued therefor pursuant to ORS 442.340.

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

(7) A license may be denied to any applicant for a license or renewal thereof or any stockholder of any such applicant who has incidents of ownership in the facility representing an interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for the facility, if during

the five years prior to the application the applicant or any stockholder of the applicant had an interest of 10 percent or more in the facility or of a lease for the facility and divested himself of that interest after receiving written notice from the division of intention to suspend or revoke the license or to decertify the home from eligibility to receive payments for services provided under this section.

(8) No license shall be issued or renewed for any long term care facility, as defined in ORS 442.015, unless the applicant has included in the application the identity of any person who has incident of ownership in the facility who also has a financial interest in any pharmacy, as defined in ORS 689.010 (1977 Replacement Part). [Amended by 1957 c.697 §2; 1961 c.316 §6; 1967 c.89 §3; 1971 c.730 §7; 1973 c.38 §1; 1973 c.840 §7; 1977 c.261 §3; 1977 c.751 §21; 1979 c.336 §1]

441.030 Denial, suspension or revocation of licenses. (1) 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 and rules relating to safety from fire.

(2) 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 441.015 to 441.063, 441.085, 441.087, subsection (3) of 441.990, ORS 442.300, 442.320, 442.330, 442.340 or the rules or minimum standards promulgated under those statutes. [Amended by 1959 c.222 §1; 1961 c.316 §7; 1971 c.730 §8; 1977 c.582 §46]

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

441.037 Hearings; procedures; judicial review of rules and orders. (1) When the division 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 §56; 1977 c.582 §47]

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

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

441.050 Additional remedies.

Notwithstanding the existence and pursuit of any other remedy, the 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 or health maintenance organization without a license. [Amended by 1971 c.730 §12; 1973 c.840 §8; 1977 c.751 §22]

441.055 Rules; evidence of compliance; health care facilities to insure compliance. (1) The division shall adopt such rules with respect to the different types of health care facilities as may be designed to further the accomplishment of the purposes of ORS 441.015 to 441.087 and 442.300. No rules shall require any specific food so long as the necessary nutritional food elements are present.

(2) Rules describing care given in health care facilities shall include, but not be limited to, standards of patient care or patient safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records. The 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.

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

(a) Insure that all health care personnel for whom state licenses or registration are required are currently licensed or registered;

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

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

(d) Insure that physicians admitted to practice in the facility are organized into a

medical staff in such a manner as to effectively review the professional practices of the facility for the purposes of reducing morbidity and mortality and for the improvement of patient care. [Amended by 1965 c.352 §1; 1971 c.730 §13; 1973 c.837 §14; 1973 c.840 §9; 1977 c.261 §4; 1977 c.448 §10; 1977 c.751 §23a]

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 §2]

441.058 Hospitals to make available to female patients tests for cancer of the cervix; hospital immune from liability if patient declines test. (1) Pursuant to hospital rules adopted by medical staff, each hospital shall make available to female patients within the age of risk a medically accepted test for cancer of the cervix and shall notify each such patient of the availability of the test.

(2) In adopting rules pursuant to subsection (1) of this section, the medical staff may make distinctions between inpatient and outpatient status, may fix the ages constituting the ages of risk and may exempt certain patients such as those hospitalized under emergency conditions from the testing. Where a patient has been exempted by rule, no notice shall be required.

(3) The hospital shall incur no liability whether or not the patient indicates refusal in writing if the patient, or the attending physician on the patient's behalf, declines to have the test made. The hospital shall incur no liability if the patient has been exempted from application of subsection (1) of this section by rules of the medical staff. [1977 c.532 §2; 1979 c.168 §1]

Note: Section 2, chapter 168, Oregon Laws 1979, provides.

Sec. 2. No hospital shall incur any liability for failure to comply with subsection (1) of ORS 441.058 if the medical staff of the hospital adopted rules such as those described in subsection (2) of ORS 441.058 on or after October 4, 1977, and before the effective date of this Act [May 25, 1979].

441.059 Access to previous X-rays and reports by patients of chiropractic physicians. The rules of a hospital that govern patient access to previously performed

X-rays or diagnostic laboratory reports shall not discriminate between patients of chiropractic physicians and patients of other licensed medical practitioners permitted access to such X-rays and diagnostic laboratory reports. [1979 c.490 §2]

441.060 Inspections; approval of plans and specifications. (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 442.340, 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 §2; 1971 c.730 §14; 1973 c.840 §10]

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

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

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 §2]

441.065 Exemption of certain religious institutions. ORS 441.015 to 441.063, 441.085, 441.087, 442.300, 442.320, 442.330, 442.340 or the rules adopted pursuant thereto do not authorize the supervision, regulation or control of the remedial care or treatment of residents or patients in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of The First Church of Christ Scientist, Boston, Massachusetts, except as to the sanitary and safe conditions of the premises, cleanliness of operation and its physical equipment. This section does not exempt such a home or institution from the licensing requirements of ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.300, 442.320, 442.330, 442.340 to 442.350 and 442.400 to 442.450.

[Amended by 1971 c.730 §17; 1973 c.840 §11; 1977 c.751 §24]

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 §3]

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

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

441.077 Revocation of license and other penalties for imposing restrictions upon certain physicians; construction of section. (1) If the governing body of a health care facility or health maintenance organization excludes or expels a person licensed under ORS chapter 677 from staff membership, or limits in any way his professional privilege in

the health care facility or health maintenance organization 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 441.015 to 441.065 and 442.300. A health maintenance organization which violates this section shall be subject to penalties provided in ORS 731.988 and 731.992.

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

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

441.080 [Repealed by 1971 c.730 §25]

441.081 Legislative policy for care of senior citizens. The Legislative Assembly recognizes the need for responsible and coordinated development of both institutional and alternative forms of care and services for senior citizens. The process of development must result in a system that assures that seniors receive the levels of care needed and that there are appropriate resources to match the various patterns of needs. Furthermore, the services should be designed to restore or maintain each individual at the level of independent living that the individual is capable of attaining. At the local level, planned systems of institutional and alternative care should be established coordinating as a minimum the resources of the Older Americans Act and Oregon Project Independence through the Area Agencies, Titles XIX and XX of the Social Security Act through the branches of the Adult and Family Services Division, and the local county health departments. These coordinated and planned systems should allow senior citizens to move within them, according to their needs, allowing appropriate services to be rendered. The provision of service, on the basis of ability to pay, should continue, in the community or in institutional care, until the individual is able to function independently, or leaves the state, withdraws from the pro-

gram or dies. This Legislative Assembly declares it to be the public policy of this state that there be developed strongly coordinated planning and delivery of the services described in order to more appropriately meet the care needs of senior citizens through the development of alternative care and services and a reduction in premature or extended institutional care. [1979 c.680 §2]

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

(a) Name of the drug;

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

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

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

(a) Name of the drug; and

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

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

441.085 Establishing licensing classifications; use of descriptive titles limited.

(1) The division may by rule establish classifications and descriptions for the various types of health care facilities which are licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.300, 442.320, 442.330, 442.340 to 442.350 and 442.400 to 442.450.

(2) A health care facility licensed by the division shall neither assume a descriptive title nor be represented under any descriptive title other than the classification title established by the division and under which it is licensed. [1971 c.730 §2; 1973 c.840 §13; 1977 c.751 §26]

441.087 General inspection. (1) The 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 assistant director of the division. [1975 c.294 §§2, 3; 1977 c.751 §27]

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

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

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

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

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

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

441.120 [Repealed by 1971 c.730 §25]

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

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

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

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

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

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

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

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

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

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

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

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

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

441.225 [Repealed by 1971 c.727 §203]

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

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

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

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

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

441.250 [Repealed by 1971 c.647 §149]

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

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

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

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

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

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

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

441.290 [Renumbered 440.335]

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

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

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

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

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

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

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

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

441.325 [Renumbered 440.365]

441.330 [Renumbered 440.370]

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

441.340 [Repealed by 1971 c.647 §149]

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

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

441.355 [Renumbered 440.390]

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

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

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

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

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

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

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

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

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

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

441.410 [Repealed by 1971 c.727 §203]

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

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

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

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

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

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

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

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

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

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

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

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

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

441.510 [Renumbered 441.810]

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

FINANCING OF 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 authori-

ty 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 ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.300, 442.320, 442.330, 442.340 to 442.350 and 442.400 to 442.450.

(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 §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, and to authorize municipalities which create authorities to utilize those authorities to issue bonds and other obligations on behalf of such municipalities in order that the municipalities may provide hospital facilities. [1973 c.153 §1; 1977 c.201 §2]

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

441.535 Procedure to create public authority. (1) A governing body may upon its own motion, and shall upon the written re-

quest of any three or more natural persons, consider whether it is advisable to create a public authority for the purpose of providing hospital facilities.

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

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

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

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

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

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

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

441.540 Board of directors; appointment; expenses; rules; quorum; personnel.

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

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

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

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

441.550 General powers 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 ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.300, 442.320, 442.330, 442.340 to 442.350 and 442.400 to 442.450 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 §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 advanta-

geous 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 investments for public bodies, trustees and other fiduciaries, banks, savings and loan associations, and insurance companies. All such revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the law of this state.

[1973 c.153 §7]

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

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

441.570 Payment of principal and interest. The board of directors shall establish rentals, selling prices, and other charges at

least adequate to pay the principal of and interest on the obligations of the authority as the same become due, including payments to any special fund or funds, together with the financing and other costs of the authority.

[1973 c.153 §10]

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

441.580 Authority as public body; tax status of assets, income and bonds. An authority is hereby declared to be a public body performing a public function. Accordingly, an authority, all assets at any time owned by it, the income therefrom, and all bonds issued by an authority, together with the coupons applicable thereto, and the 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 §12]

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

[1973 c.153 §13; 1977 c.201 §6]

441.590 Authority 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. Howev-

er, nothing contained in ORS 441.525 to 441.595 shall be construed as a restriction or limitation upon any powers which an authority might otherwise have under any law of this state or the charter of any municipality. [1973 c.153 §14]

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

LONG TERM CARE FACILITIES

(Nursing Home Patients' Bill of Rights)

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

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

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

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

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

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

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

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

(2) Fully informed which services are available and of any additional charges not

covered by the daily rates or by Medicare or Medicaid.

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

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

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

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

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

(8) Assured that medical and personal records are kept confidential and unless the resident transferred, or examination of the records is required by the third party payment contractor, are not released outside the facility.

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

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

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

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

(13) Able to keep and use personal clothing and possessions as space permits unless to

do so infringes on other residents' rights and unless medically contraindicated.

(14) Provided, if married, with privacy for visits by the resident's spouse. If both spouses are residents in the facility, they are permitted to share a room. [1979 c.261 §4]

441.610 Nursing home patients' bill of rights; adoption; standards. (1) Within 120 days after June 19, 1979, the division shall adopt a nursing home patients' bill of rights consistent with the principles set forth in ORS 441.605. The rules shall be applicable to all residents and as far as practicable shall conform to any federal nursing home patients' bill of rights.

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

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

441.615 Powers and responsibilities of Health Division. In the administration of ORS 441.600 to 441.625, 441.710 and 441.715, the division shall have the following powers and responsibilities:

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

(2) To adopt rules in accordance with ORS 183.310 to 183.500, including but not limited to procedures for investigations and administrative hearings.

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

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

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

441.625 Retaliation against resident exercising rights prohibited. (1) No facility, or any person subject to the supervision, direction or control of a facility, shall retaliate against a resident by increasing charges, decreasing services, rights or privileges, or threatening to increase charges or decrease services, rights or privileges, by taking or threatening any action to coerce or compel the resident to leave the facility, or by abusing or threatening to harass or to abuse a resident in any manner, after the resident or the resident's legal representative has engaged in exercising rights given under ORS 441.605 or under rules of the division under ORS 441.610. [1979 c.261 §7]

(Patient Abuse)

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

(1) "Abuse" means:

(a) Any physical injury to a patient of a long term care facility which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(b) Neglect which leads to physical harm.

(c) Failure to provide direct patient care.

(2) "Division" means the Adult and Family Services Division of the Department of Human Resources.

(3) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(4) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Licensed practical nurse or registered nurse.

(c) Employee of the Department of Human Resources, county health department, community mental health program or a long term care facility or person who contracts to provide services to a long term care facility.

(d) Peace officer.

(e) Clergyman.

(f) Registered social worker.

(g) Physical therapist.

(h) Legal counsel for a resident or guardian or family member of the resident. [1979 c.770 §1]

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

441.640 Report of suspected abuse of patient required. Any public or private official having reasonable cause to believe that any patient in a long term care facility with whom the official comes in contact, while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused a patient in a long term care facility shall report or cause a report to be made in the manner required in ORS 441.645. [1979 c.770 §3]

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

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

441.650 Investigation; written report of abuse to division; division duties. (1) Upon receipt of the oral or written report required under ORS 441.640 the division or

the law enforcement agency shall cause an investigation to be commenced within two hours of the report. The investigation must be made by a person who shall actually go to the facility to determine the nature and cause of the abuse of the patient. The investigation may be made by personnel of the Health Division.

(2) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify in writing the local office of the division. The division shall provide services of its own or other available social agencies to implement ORS 441.630 to 441.685, 678.037 and 678.155 to prevent further abuses to the patient or to safeguard the welfare of the patient. In carrying out its duties under ORS 441.630 to 441.685, 678.037 and 678.155, the division shall coordinate its activities with the Health Division. [1979 c.770 §5]

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

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

441.660 Photographing patient; photograph as record. (1) In carrying out its duties under ORS 441.650 the law enforcement agency, the division or the Health Division may photograph or cause to have photographed any patient subject of the investigation for purposes of preserving evidence of the condition of the patient at the time of the investigation.

(2) For purposes of ORS 441.670, photographs taken under authority of subsection (1) of this section shall be considered records. [1979 c.770 §7]

441.665 Record of reports. A proper record of reports under ORS 441.640 and 441.645 on patients in long term care facilities shall be maintained by the division. The division or the Health Division shall prepare reports in writing when investigation has shown that the condition of the patient was the result of abuse even if the cause remains unknown. The reports shall be catalogued both as to the name of the patient and the name of the family or other persons responsible for the care of the patient. [1979 c.770 §8]

441.670 Confidentiality of reports and records. (1) Notwithstanding the provisions of ORS 192.410 to 192.500 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 441.630 to 441.680 are confidential and are not accessible for public inspection. However, the division shall make records available to any law enforcement agency in any other state for the purpose of subsequent investigation of patient abuse, and to any physician, on request, regarding any patient brought to or coming before the physician for examination, care or treatment.

(2) Any record made available to a law enforcement agency in this state or a physician in this state, as authorized by subsection (1) of this section, shall be kept confidential by the agency or physician.

(3) No officer or employe of the division, any social service agency, any law enforcement agency or any physician shall release any information not authorized to be released by subsection (1) of this section. [1979 c.770 §9]

441.675 Certain evidentiary privileges inapplicable. In the case of abuse of a patient in a long term care facility, the physician-patient privilege, the husband-wife privilege, and the privilege extended under ORS 44.040 shall not be a ground for excluding evidence regarding the abuse of a patient, or the cause thereof, in any judicial proceeding resulting from a report made pursuant to ORS 441.640. [1979 c.770 §10]

441.680 Spiritual healing alone not considered neglect of patient. An elderly person who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered a

neglected patient within the meaning of ORS 441.630 to 441.680. [1979 c.770 §11]

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

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

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

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

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

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

(4) With the consent of the Director of Human Resources, the assistant director may designate monitors from other divisions of the Department of Human Resources.

(5) Associations representing long term care facilities may initiate a peer review process for any facility that is a member of the association and that is the subject of any complaint filed against it under ORS 441.630 to 441.685, 678.037 and 678.155 or any other provision of law. The report of the peer review

process shall be submitted to the division. The peer review described in this subsection is in addition to and not in lieu of any other investigation, observation or report of the monitors otherwise required or authorized by ORS 441.630 to 441.685, 678.037 and 678.155. The association and persons conducting the peer review process acting in good faith shall not be subject to an action for civil damages as a result thereof.

(6) As used in this section:

(a) "Assistant director" means the Assistant Director for Health of the Department of Human Resources.

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

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

(d) "Monitor" means an agent of the assistant director designated by the assistant director to observe the operation of a facility. [1979 c.770 §§12, 13]

Note: Sections 16 and 19, chapter 770, Oregon Laws 1979, provide:

Sec. 16. The Adult and Family Services Division and the Health Division of the Department of Human Resources shall report to the Sixty-first Legislative Assembly on the implementation of this Act. The report shall include the number of abuse complaints received and the results of the investigations thereof and the frequency of appointment of monitors and the reports thereof. The report shall also include a full report of the fiscal impact of this Act and an assessment of its effect in protecting the health and safety of patients in long term care facilities.

Sec. 19. The Department of Human Resources shall prepare and present to the next regular session of the Legislative Assembly a bill to establish a procedure to initiate court supervised operation of a long term care facility on a temporary basis if required to protect the health, welfare or level of care of patients therein.

CIVIL PENALTIES

441.705 Definitions for ORS 441.705 to 441.745. (1) "Person" means a licensee under ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.300, 442.320, 442.330, 442.340 to 442.350 and 442.400 to 442.450, or a person whom the assistant director finds should be so licensed but is not, but does not include any employe of such licensee or person.

(2) "Direct patient care or feeding" means any care provided directly to or for any pa-

tient related to that patient's physical, medical and dietary well-being as defined by rules of the Health Division.

(3) "Staff to patient ratio" means the number and training of persons providing direct patient care as defined in rules of the Health Division. [1975 c.328 §9; 1977 c.261 §7]

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

441.710 Civil penalties; when imposed. (1) In addition to any other liability or penalty provided by law, the Assistant Director for Health may impose a civil penalty on a person for any of the following:

(a) Violation of any of the terms or conditions of a license issued under ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.300, 442.320, 442.330, 442.340 to 442.350 and 442.400 to 442.450 for a long term care facility, as defined in paragraph (b) of subsection (1) of ORS 441.005 (1975 Replacement Part).

(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 assistant director that pertains specifically to the long term care facility owned or operated by the person incurring the penalty.

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

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

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

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

Note: See note under 441.705.

441.712 When civil penalty due; notice; hearing. (1) Any civil penalty imposed under ORS 441.710 shall become due and payable when the person incurring the penalty receives a notice in writing from the Assistant Director for Health. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 10 days from the date of mailing of the notice in which to make written application for a hearing before the assistant director.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.500. [1977 c.261 §6]

Note: See note under 441.705.

441.715 Schedule of civil penalties. (1)

(a) After public hearing, the Assistant Director for Health 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.

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

(2) The penalties assessed under subsection (1) of this section shall not exceed \$6,000 in the aggregate with respect to a single long term care facility within any 90-day period. [1975 c.328 §2; 1977 c.261 §9; 1979 c.261 §9]

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 Assistant Director

for Health considers proper and consistent with the public health and safety. [1975 c.328 §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 Assistant Director for Health 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 §4]

Note: See note under 441.705.

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

441.735 Order assessing penalty. If the person notified fails to request a hearing within the time specified in ORS 441.712, 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.

(2) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. [1975 c.328 §6; 1977 c.261 §10]

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 §7]

Note: See note under 441.705.

441.745 Penalties to General Fund. All penalties recovered under ORS 441.710 to

441.740 shall be paid into the State Treasury and credited to the General Fund. [1975 c.328 §8]

Note: See note under 441.705.

MISCELLANEOUS

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

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

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

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

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

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

(4) As used in this section, "hospital" has the meaning given in ORS 441.005 (1975 Replacement Part). [Formerly 441.515; 1977 c.173 §1]

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

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

441.825 Authority of hospital to require medical staff to provide professional liability insurance. (1) If two-thirds of the medical staff concurs, a governing body of a hospital licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.300, 442.320, 442.330,

442.340 to 442.350 and 442.400 to 442.450 may require all members of its medical staff to:

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

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

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

(2) As used in this section:

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

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

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

PENALTIES

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

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

(b) Violation of subsection (2) or (3) of ORS 441.815 is a violation punishable by a fine of \$100.

(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 §2; subsection (3) enacted as 1975 c.294 §4; 1977 c.173 §2; 1977 c.582 §48]

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, 1979.

Thomas G. Clifford
Legislative Counsel