

Chapter 443

1981 REPLACEMENT PART

Home Health Agencies; Residential Facilities

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HOME HEALTH AGENCIES

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

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

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

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

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

(c) Those personal care services that do not pertain to the curative, rehabilitative or preventive aspect of nursing.

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

443.010 [Amended by 1963 c 164 §1, repealed by 1969 c 641 §19]

443.015 License required; renewal, transferability of license. On and after January 1, 1978, no public or private agency or person shall establish, conduct or maintain a home health agency or organization providing home health services for compensation, or hold itself out to the public as a home health agency or organization, without first obtaining a license therefor from the Health Division. The license shall be renewable annually and is not transferable. [1977 c 738 §2]

443.020 [Amended by 1957 c 697 §4, 1961 c 316 §10, 1967 c 89 §6, repealed by 1969 c 641 §19]

443.025 Hospitals exempt from licensing requirements if standards are met. Any hospital licensed under ORS 441.015 may provide home health services without obtaining a license under ORS 443.035 so long as the services provided meet the requirements of ORS 443.005 to 443.095. [1977 c 738 §7]

443.030 [Repealed by 1969 c 641 §19]

443.035 License fees; renewal date; disposition of funds. (1) A license may be granted, or may be renewed annually, for the calendar year beginning on or after January 1, 1978, upon payment of a fee as determined by the division.

(2) All fees received pursuant to subsection (1) of this section shall be paid over to the State Treasurer and credited to the Health Division Account. Such moneys are appropriated continuously to the Health Division for the administration of ORS 443.005 to 443.095. [1977 c 738 §8]

443.040 [Repealed by 1969 c.641 §19]

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

(2) License denials, suspensions and revocations, adoption of rules and judicial review thereof shall be in accordance with ORS 183.310 to 183.550. [1977 c 738 §9]

443.050 [Repealed by 1969 c 641 §19]

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

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

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

(1) Be primarily engaged in providing skilled nursing services and at least one other service delineated in ORS 443.075 (2) and (3);

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

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

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

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

443.075 Physician required to plan and review certain treatment. The following services and supplies may be prescribed by a physician in accordance with a plan of treatment which must be established and periodically reviewed by the physician:

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

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

(3) Home health aide services; and

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

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

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

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

(3) Procedures for maintaining records; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LICENSING OF RESIDENTIAL FACILITIES

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

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

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

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

(4) "Resident" means any individual residing in a facility who receives residential care, treatment or training. For purposes of ORS 443.400 to 443.455 and 443.991 (2), an individual is not considered to be a resident if he or she is related by blood or marriage within the fourth degree as determined by civil law to the person licensed to operate or maintain the facility

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

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

(7) "Residential treatment facility" means a facility that provides, for six or more mentally, emotionally or behaviorally disturbed individuals, residential care and treatment in

one or more buildings on contiguous properties.

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

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

(10) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional or physical symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance or physical handicap.

[1977 c 717 §1]

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

- (1) A residential school;
- (2) State or local correctional facilities, other than local facilities for persons enrolled in work release programs maintained under ORS 144.460; juvenile training schools as defined in ORS 420.005; and juvenile detention facilities as defined in ORS 419.602;
- (3) A nursing home;
- (4) A hospital;
- (5) A place primarily engaged in recreational activities;
- (6) A foster home; or
- (7) A place providing care and treatment on less than a 24-hour basis. [1977 c 717 §2]

443.410 License required; single fee for multiple facility operations. (1) A license issued by the department is required in order to operate or maintain any residential facility having six or more mentally retarded; developmentally disabled; mentally, emotionally or behaviorally disturbed; physically handicapped or socially dependent residents; or any combination of such residents totaling six or more. In the case of a combination of

residents, the category of licensure shall be determined by the director.

(2) A child-caring agency subject to ORS 418.205 to 418.310 which operates any residential facility is subject to the requirement of this section. Any residential facilities operated by such an agency are subject to the requirements of ORS 443.400 to 443.455 and 443.991 (2). In applying for a license, the agency or institution is required to pay only a single fee under ORS 443.415 regardless of the number of residential facilities operated by it. [1977 c 717 §3]

443.415 License applications; fee; investigations; grounds for issuance and denial of license. (1) Applications for licensure to maintain and operate a residential facility shall be made to the department on forms provided for that purpose by the department. Each application shall be accompanied by a fee of \$60. No fee is required of any governmentally operated residential facility.

(2) Upon receipt of an application and fee, the department shall cause an investigation to be made by the appropriate divisions, as determined by the director. The department shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.400 to 443.455 and 443.991 (2) and the rules of the director. Licensure may be denied when a residential facility is not in compliance with ORS 443.400 to 443.455 and 443.991 (2) or the rules of the director. Licensure shall be denied if the State Fire Marshal or other authority has given notice of noncompliance pursuant to ORS 479.220. [1977 c 717 §8, 1979 c 696 §16]

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

- (a) Who demonstrates an understanding and acceptance of the rules governing residential facilities;
- (b) Mentally and physically capable of caring for such residents; and
- (c) Who employs or utilizes only individuals whose presence does not jeopardize the health, safety or welfare of residents.

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

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

(4) Prior to licensure, a residential facility must be in substantial compliance with applicable state and local laws, rules, codes, ordinances and permit requirements. [1977 c 717 §4]

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

(2) A license is renewable upon submission of an application to the department and payment of a fee of \$50. No fee shall be required of a governmentally operated residential facility. Filing of an application for renewal before the date of expiration of a license extends the effective date of expiration of the license until the department has acted upon such application. The department shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules, or if the State Fire Marshal or his authorized representative has given notice of noncompliance pursuant to ORS 479.220.

(3) Any license, certificate or approval in effect on July 1, 1978, shall be considered a valid license under ORS 443.400 to 443.455 and 443.991 (2) until its date of expiration for purposes of ORS 144.460, 283.010, 418.215, 418.475, 418.805, 443.400 to 443.455, 443.991 (2), 479.210, 479.217 and 627.005. [1977 c 717 §9]

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

(2) All moneys collected under ORS 443.400 to 443.455 and 443.991 (2) shall be deposited in a special account in the General Fund, and are appropriated continuously for

payment of expenses incurred by the department in the administration of ORS 443.400 to 443.455 and 443.991 (2). [1977 c 717 §10]

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

443.440 Revocation and suspension of licenses; procedure. The department may revoke or suspend the license of any residential facility which is not operated in accordance with ORS 443.400 to 443.455 and 443.991 (2) or the rules adopted thereunder. Such revocation or suspension shall be taken in accordance with rules of the department and ORS 183.310 to 183.550. However, in cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension. [1977 c 717 §12]

443.445 Persons admissible at facilities; transfer of persons requiring certain treatment; operation of facilities by persons relying on spiritual means for healing. (1) No residential facility shall admit individuals who require continuous nursing care.

(2) If any resident of a residential facility requires nursing care for eight or more consecutive days or a physician or registered nurse certifies that continued nursing care is required, the resident shall be transferred to an appropriate health care facility for as long as necessary.

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

(4) In the case of residential facilities supervised by and operated exclusively for persons who rely upon prayer or spiritual means for healing in accordance with the creed or tenets of a well-recognized church or

religious denomination, no medical, psychological or rehabilitative procedures shall be required. [1977 c 717 §5]

443.450 Rules. (1) The director, with the advice and guidance of affected divisions, shall adopt rules governing:

(a) The physical properties of the residential facility;

(b) Storage, preparation and serving of food;

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

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

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

(2) Distinct rules shall be adopted for residential training facilities, residential treatment facilities and residential care facilities. Distinct rules also shall be adopted for facilities of six or more but fewer than 16 residents, and for facilities for 16 or more residents. The rules shall differentiate among categories of residents

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

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

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

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

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

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

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

443.455 Civil penalties. For purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 and 443.991 (2) are considered to be long-term care

facilities, subject to ORS 441.705 to 441.745. However; the director and the department shall exercise the powers conferred on the Assistant Director for Health and such division under ORS 441.705 to 441.745, and shall by rule prescribe a schedule of penalties appropriate to residential facilities licensed under ORS 443.400 to 443.455 and 443.991 (2). [1977 c.717 §13]

FINANCIAL ADMINISTRATION

443.475 Disposition of moneys received by Health Division. All moneys received by the Health Division under ORS chapter 443 (1975 Replacement Part) shall be deposited into the General Fund of the State Treasury and placed to the credit of the Health Division Account. [1977 c 284 §2]

SITING OF RESIDENTIAL FACILITIES

443.510 Definitions for ORS 443.510 to 443.550. As used in ORS 443.510 to 443.550, unless the context requires otherwise:

(1) "Elderly person" means a person who is 62 years of age or older.

(2) "Handicapped person" means an individual who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities.

(3) "Major life activity" means self-care, ambulation, communication, transportation, education, socialization, employment and the ability to acquire and maintain adequate, safe and decent shelter.

(4) "Residential facility" means a facility licensed under ORS 443.400 to 443.455 for 11 or fewer unrelated physically or mentally handicapped persons or elderly persons and not to exceed two staff persons who need not be related to each other or to any other facility resident. [1981 c 427 §1]

443.520 Policy. The Legislative Assembly finds and declares that:

(1) It is the policy of this state that physically or mentally handicapped persons and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential facilities to provide quality care and protection for physically or mentally handicapped persons and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is becoming increasingly difficult to site and establish residential facilities in the communities of this state; and

(4) Restrictions on the siting of such facilities have become a state-wide problem. [1981 c 427 §2]

443.530 Procedures for siting residential facilities. (1) Each city and county may adopt a procedure that provides opportunities for the siting of residential facilities within its jurisdiction including the siting of such facilities in single family residential zones. The procedure shall specify all conditions the requirements of which must be satisfied for the approval of an application for the siting of a residential facility, including any applicable zoning or land use restrictions.

(2) If a city or county denies an application for the siting of a residential facility, it must make formal findings of the reasons for the denial pursuant to the procedure adopted under subsection (1) of this section.

(3) Denial of an application for the siting of a residential facility by an agency, board or commission of a city or county may be appealed to the governing body of the city or county.

(4) Under the procedure established under this section, a city or county shall not require independent proof of conditions that have been required by the state for licensing of the residential facility, unless in the case of the particular facility, the city or county finds that:

(a) Circumstances have changed;

(b) Additional information about those conditions is necessary; or

(c) Review of the conditions is necessary to respond to the residents of the jurisdiction.

(5) Upon request of a city or county, an agency applying for licensing of a facility shall supply the city or county with a copy of its application for state licensing of the facility. [1981 c 427 §3]

443.540 Siting application. A city or county shall approve or deny an application for the siting of a residential facility within 90 days after the date of application, unless both the applicant and the city or county agree to an extension of time. [1981 c 427 §4]

443.550 Denial prohibited unless procedure adopted. After July 1, 1982, no city or county may deny an application for the siting of a residential facility unless it has adopted the procedure authorized by ORS 443.530. [1981 c 427 §5]

PENALTIES

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

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

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

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

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed. [Subsection (1) enacted as 1977 c 738 §11, subsection (2) enacted as 1977 c 717 §14; 1979 c 284 §144]