

# Chapter 441

## 1983 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**441.005** [Amended by 1971 c 730 §1, 1973 c 840 §1, repealed by 1977 c 751 §57]

**441.007** [1973 c 840 §2, repealed by 1977 c 751 §39]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]

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

(1) Facilities established by ORS 430.306 to 430.335 for treatment of alcoholism;

(2) Community mental health programs established under ORS 430.610 to 430.700; and

(3) Facilities established for treatment of drug abuse. [1981 c 231 §2]

**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. License fees paid for the first year following July 26, 1977, shall be prorated to

reflect the change in license period provided in ORS 441.025 (2).

(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, 442.320, 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, 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, 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 689.005. [Amended by 1957 c 697 §2, 1961 c 316 §6, 1967 c 89 §3, 1971 c 730 §7, 1973 c 38 §1, 1973 c 840 §7, 1977 c 261 §3, 1977 c 751 §21, 1979 c 336 §1, 1983 c 740 §156]

**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, 441.990 (3), 442.320, 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 183.550.

(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 183.550. [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. 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; reporting by employe; rules.** (1) 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 health care facility and provide for the confidentiality of the identity of any complainant

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

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

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

(5) Any person suffering loss or damage due to any violation of subsection (2) of this section has a right of action for damages in addition to other appropriate remedy. [1975 c 360 §2, 1981 c 336 §1]

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

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

**441.060 Inspections; approval of plans and specifications.** (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, 442.320, 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, 442.320, 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]

**441.073 Staff ratio in long term care facilities; variances; posting.** (1) The Health Division shall adopt rules specifying maximum number of patients per nursing assistant per shift in long term care facilities.

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

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

**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. A health maintenance organization which violates this section shall be subject to penalties provided in ORS 731.988 and 731.992.

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

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

441.080 [Repealed by 1971 c 730 §25]

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

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

- (a) Name of the drug;
- (b) Amount paid by the facility for the drug; and
- (c) Amount charged by the facility for the drug.

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

- (a) Name of the drug; and
- (b) Amount charged by the pharmacy for the drug

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

**441.084 Choice of patient on suppliers of drugs and supplies.** (1) A patient in a long term care facility or an intermediate care facility required to be licensed under ORS 441.015 must have a choice:

(a) From among prescription drug delivery systems so long as the system selected:

- (A) Provides for timely delivery of drugs;
- (B) Provides adequate protection to prevent tampering with drugs;
- (C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and
- (D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy;

(b) From among suppliers of nonprescriptive medication but no facility is required to accept any opened container of such medication;

(c) From among suppliers of nonprescriptive sickroom supplies so long as any items supplied can be maintained in a clean manner with equipment available at the facility; and

(d) For purposes of paragraphs (b) and (c) of this subsection, "supplier" includes an authorized representative of the patient who purchases nonprescriptive medication or nonprescriptive sickroom supplies at retail.

(2) If the established system of the facility, whether that system is provided by a facility pharmacy or a pharmacy under contract, provides patient profile information, the pharmacy chosen by the patient under paragraph (a) of subsection (1) of this section must also provide that information for any patient it serves at the facility. [1983 c 328 §1]

**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, 442.320, 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]

### LONG TERM CARE OMBUDSMAN

**441.100 Definitions for ORS 441.100 to 441.133.** (1) "Administrative action" means any action or decision made by an owner, employe or agent of a long term care facility or by a public agency that affects the services to residents.

(2) "Designee" means an individual appointed by the Long Term Care Ombudsman with the approval of the Governor to serve as a representative in order to carry out the purpose of ORS 441.100 to 441 133.

(3) "Long term care facility" means any licensed skilled nursing facility, intermediate care facility, as defined in rules adopted under ORS 442 015 and residential care facility as defined in ORS 443.400 (8) [1981 c 534 §1]

**441.103 Office of Long Term Care Ombudsman established.** The office of the Long Term Care Ombudsman is established in the office of the Governor. The Long Term Care Ombudsman shall function separately and independently from any other state ombudsman. The Governor shall appoint the Long Term Care Ombudsman. [1981 c 534 §2]

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

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

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

(1) Investigate and resolve complaints made

by or for residents of long term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights

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

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

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

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

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

(7) Collaborate with the Department of Human Resources, specifically the Office of Elderly Affairs, the Adult and Family Services Division, the Health Division and the Board of Examiners of Nursing Home Administrators to establish a state-wide system to collect and analyze information on complaints and conditions in long term care facilities for the purpose of publicizing improvements and resolving significant problems.

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

(9) Specify qualifications and duties of designees.

(10) Adopt rules necessary for carrying out ORS 441.100 to 441.133.

(11) Provide a quarterly report to the Governor, Health Division and Office of Elderly Affairs. [1981 c 534 §4]

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

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

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

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

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

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

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

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

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

(d) Interviewing employes or agent of the long term care facility;

(e) Consulting regularly with the facility administration; and

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

(2) The Long Term Care Ombudsman shall have access to any resident's records, and to records of any public agency necessary to the duties of the office, including records on patient abuse complaints made pursuant to ORS 441.630 to 441.680. Nothing contained in ORS 192.525 or 192.530 is intended to limit the access of the Long Term Care Ombudsman to medical records of residents of long term care facilities. Designees may have access to individual resident's records, including medical records as authorized by the resident or resident's legal representative, if needed to investigate a complaint.

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

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

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

441.120 [Repealed by 1971 c 730 §25]

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

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

(2) Within 60 days after November 1, 1981, the administrator of each long term care facility shall post the written notice required by this section in conspicuous places in the facility in accordance with procedures provided by the ombudsman and shall give such notice to any resident and legally appointed guardian, if any. [1981 c 534 §8]

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

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

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

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

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

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

- (a) The area agency on aging.
- (b) The local office of the Adult and Family Services Division.
- (c) The local health department.
- (d) Senior citizens groups in the area.
- (e) Long term care facilities in the area.
- (f) Local elected officials

(2) To be appointed as a designee, a person must complete six days of initial training and attend quarterly training sessions which are approved by the Long Term Care Ombudsman and which shall be coordinated and funded by the Office of Elderly Affairs subject to the availability of funds therefor.

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

(4) The qualifications of designees shall include experience with long term care facilities or residents thereof or potential residents including the ability to communicate well, to understand laws, rules and regulations, and to be assertive, yet objective.

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

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

- (a) Promote rapport and trust between the residents, staff of the nursing home and nursing home ombudsman program;
- (b) Assist nursing home residents with participating more actively in determining the delivery of services in long term care facilities;
- (c) Serve as an educational resource;

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

(e) Assure equitable resolution of problems.

(7) The duties of the designees are to.

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

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

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

(C) Visit individual residents and resident councils.

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

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

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

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

(f) Perform other related duties as specified.

[1981 c 534 §10]

**441.133 Effect of ORS 441.100 to 441.133 on right to visitors.** Nothing in ORS 441.100 to 441 133 shall affect the right of residents of a long term care facility to see visitors of their choice. [1981 c 534 §11]

**441 135** [Amended by 1955 c 464 §5, 1965 c 308 §4, 1971 c 730 §20, repealed by 1977 c 751 §39]

**441.140** [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 ss c 13 §1, renumbered 440 305]

**441.200** [1951 ss 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 ss c 13 §4 (441 216 enacted in lieu of 441 215)]

**441.216** [1957 ss 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 ss c 13 §8]

**441.250** [Repealed by 1971 c 647 §149]

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

**441.260** [Amended by 1969 c 343 §8, repealed by 1971 c 727 §203]

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

**441.270** [Amended by 1969 c 343 §9, repealed by 1971 c 727 §203]

**441.275** [Amended by 1969 c 343 §10, repealed by 1971 c 727 §203]

### TRUSTEE TO INSURE COMPLIANCE WITH CARE RULES

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

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

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

(3) "Facility" means a long term care facility as defined in ORS 442.015 or a residential care facility as defined in ORS 443.400 (8). Facilities under the jurisdiction of the Children's Services Division are exempt from ORS 441.277 to 441.323.

(4) "Monitor" means an agent of the assistant director designated by the assistant director to observe the operation of a facility. [1981 c 868 §1]

**441.280** [Amended by 1969 c 343 §11, 1971 c 727 §117, renumbered 440.325]

**441.281 Petition for plan for compliance with patient care rules; hearing; order.** (1) If the report filed by the monitors under ORS 441.685 (3) recommends that a petition be filed, to assure proper patient care, the Assistant Director for Health may apply by petition in writing to the circuit court for the county in which the facility is located for an

order requiring a plan for compliance with patient care rules for the facility.

(2) Without the necessity of designating monitors, the assistant director may petition the circuit court for the order described in subsection (1) of this section if there is significant concern on the part of the assistant director that the health and welfare of patients in a facility are now or in the immediate future will be in jeopardy.

(3) Proper patient care is lacking when.

(a) Physicians' orders are not being followed correctly.

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

(c) There is deficient staffing to the point of causing physical or mental harm to the patient.

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

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

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

(6) If the court determines at the hearing that grounds exist for requiring a plan of compliance with patient care rules for the facility, based upon the evidence presented, the court shall enter the order and require that the plan be submitted to the court. [1981 c 868 §2]

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

**441.286 Implementation of plan; termination of order or appointment of trustee; grounds.** (1) If ordered, the facility shall submit its plan for complying with patient care rules. The court may accept the plan or cause it to be modified.

(2) The Health Division shall monitor the implementation of the plan and report to the court within 30 days. If the court is satisfied that the plan implementation has resulted in proper patient care, it shall terminate its order and dismiss the petition. However, if the Health Division reports that implementation of the plan

is not resulting in proper patient care or that the facility failed to implement the plan, the court shall cause the facility to appear.

(3) If the court at the hearing is not satisfied that the plan has resulted in proper patient care it may determine that grounds exist for the appointment of a trustee for the facility, based upon the evidence presented, the court shall appoint a trustee to administer the facility for a period not to exceed 18 months. The grounds for the appointment of a trustee shall be that the health and welfare of patients in a facility are now or in the immediate future will be in jeopardy based on:

(a) Sufficient surveys or investigations of complaints resulting in the determination that the complaints are supported by findings.

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

(A) Physicians' orders not being followed correctly.

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

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

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

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

(d) The facility is insolvent.

(e) The Health Division has revoked or suspended the license of the facility.

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

(g) The facility refuses to allow the monitors access to the facility. [1981 c 868 §3]

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

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

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

(3) Shall have the same rights to possession of the building in which the facility is located and of all goods and fixtures in the building at

the time the petition for the appointment of the trustee is filed as the person or body legally responsible would have had if the trustee had not been appointed.

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

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

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

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

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

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

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

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

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

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

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

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

(16) If the facility ceases to operate during the period of the trust and any patient is transferred as a result thereof, the trustee shall assure that.

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

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

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

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

(17) Is an agent of the state for purposes of ORS 30 260 to 30.300 and 278.100 for which the Health Division shall be assessed and the Health Division may use the account established under ORS 441 303 to pay the assessment. [1981 c 868 §4]

441.290 [Renumbered 440 335]

**441.293 Liability to trustee for goods and services after notice; effect of non-payment.** (1) A person who is served with notice of an order of the court appointing a trustee, with the trustee's name and address, shall be liable to pay the trustee for any goods or services provided by the trustee after the date of the order if the person would have been liable for the goods or services as supplied by the person or body legally responsible for the facility. The trustee shall give a receipt for each payment and

shall keep a copy of each receipt on file. The trustee shall deposit amounts received in a special account and may use this or any other similar account for disbursements.

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

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

441.295 [Amended by 1969 c 343 ss 13, 27, 1969 c 344 §6, 1971 c 403 §7, renumbered 440 340]

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

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

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

**441.301 Payment of expenses when income inadequate.** If funds collected under ORS 441.289 and 441.293 are insufficient to meet the expenses of performing the powers and

duties conferred on the trustee by ORS 441.277 to 441.323, or if there are insufficient funds on hand to meet those expenses, the division may draw from the supplemental funds created under ORS 441.303 to pay those expenses. Operating funds collected under this section and not applied to the expenses of the trust shall be used to reimburse the fund for advances made under this section. [1981 c 868 §7]

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

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

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

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

(5) The assessment imposed under this section shall be considered an allowable cost in

setting the reimbursement rates of a facility by the Adult and Family Services Division.

(6) The court may order that the trustee file an undertaking with the clerk of the court. The fund collected under this section may serve as surety for the undertaking. [1981 c 868 §7a, 1983 c 787 §1]

**441.305** [Amended by 1969 c 343 §15, 1971 c 647 §79, renumbered 440.350]

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

**441.307** [1957 ss c 13 §7, 1969 c 343 §16, repealed by 1971 c 647 §149]

**441.308** [Repealed by 1957 ss c 13 §8]

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

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

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

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

**441.315** [Amended by 1971 c 647 §80, renumbered 440.355]

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

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

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

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

(c) Order the Health Division without further administrative hearing to revoke the license of the facility

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

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

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

legally responsible for the facility shall be credited to reimburse the account for funds contributed by the division under ORS 441.303

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

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

**441.320** [Amended by 1967 c 37 §1, 1967 c 353 §1, 1971 c 89 §1, 1971 c 727 §118, renumbered 440 360]

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

(a) To relieve any person or body legally responsible for the facility placed in trust of any civil or criminal liability incurred, or any duty imposed by law by reason of acts or omissions of the person or body legally responsible prior to the appointment of a trustee under ORS 441 286.

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

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

**441.325** [Renumbered 440 365]

**441.330** [Renumbered 440 370]

**441.335** [Amended by 1963 c 9 §25, 1969 c 343 §18, renumbered 440 375]

**441.340** [Repealed by 1971 c 647 §149]

**441 345** [Amended by 1969 c 2 §1, 1969 c 343 §19, 1969 c 694 §7, 1971 c 36 §4, renumbered 440 380]

**441.350** [Amended by 1969 c 343 §20, renumbered 440 385]

**441.355** [Renumbered 440 390]

### MOVES FROM LONG TERM CARE FACILITIES

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

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

(2) "Long term care facility" means any long term care facility as defined in ORS 442.015 (12)(b)

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

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

**441.360** [Amended by 1963 c 9 §26, 1969 c 694 §8, renumbered 440 395]

**441.362 Notice by Senior Services Division prior to move or termination; hearing; consent to move; who may consent; civil penalty.** (1) The Senior Services Division shall not move any resident from a long term care facility or terminate payment for a resident of a long term care facility without providing 30 days' written notice to the resident of the reasons for the move or termination of payment, the resident's right to a hearing in accordance with ORS 183.310 to 183.550 and the grounds for contesting the move or termination of payment.

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

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

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

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

(6) The Assistant Director for Health may impose a civil penalty for violation of ORS 441.367 (1) under ORS 441.710 (1)(b) [1983 c 269 §§2, 5]

**441.365** [Amended by 1961 c 396 §1, 1969 c 343 §20a, 1969 c 694 §9, 1971 c 36 §5, 1973 c 284 §3, renumbered 440 400]

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

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

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

(2) A long term care facility shall give 30 days' notice in writing to all residents of changes in additional expenses or charges. [1983 c 269 §§3, 4]

**441.370** [Amended by 1969 c 343 §21, renumbered 440 405]

**441.375** [Amended by 1973 c 284 §4, renumbered 440 410]

**441.380** [Amended by 1969 c 343 §22, repealed by 1971 c 727 §203]

**441.385** [Amended by 1969 c 343 §23, repealed by 1971 c 727 §203]

**441.390** [Amended by 1969 c 343 §24, repealed by 1971 c 727 §203]

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

**441.400** [Amended by 1969 c 343 §25, repealed by 1971 c 727 §203]

**441.405** [Amended by 1969 c 343 §26, repealed by 1971 c 727 §203]

**441.410** [Repealed by 1971 c 727 §203]

**441.415** [1973 c 837 §2, 1977 c 751 §40, renumbered 442 400]

**441.420** [1973 c 837 §1, 1977 c 751 §41, renumbered 442 405]

**441.425** [1973 c 837 §3, repealed by 1977 c 751 §57]

**441.430** [1973 c 837 §4, repealed by 1977 c 751 §57]

- 441.435 [1973 c 837 §6, 1977 c 751 §42, renumbered 442 420]
- 441.440 [1973 c 837 §7, renumbered 442 425]
- 441 445 [1973 c 837 §8, renumbered 442 430]
- 441 460 [1973 c 837 §9, 1977 c 751 §43, renumbered 442 435]
- 441.465 [1973 c 837 §10, renumbered 442 440]
- 441 470 [1973 c 837 §11, repealed by 1977 c 751 §57]
- 441.475 [1973 c 837 §5, repealed by 1977 c 751 §57]
- 441.480 [1973 c 837 §12, renumbered 442 445]
- 441.505 [Subsection (2) enacted as 1957 c 584 §2, 1967 c 498 §5, renumbered 440 505]
- 441.510 [Renumbered 441 810]
- 441.515 [1971 c 166 §1, renumbered 441 815]

### FINANCING OF HEALTH CARE FACILITIES CONSTRUCTION

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

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

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

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

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

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

**441.530 Policy.** In order to provide the people of Oregon with access to adequate medical care and hospital facilities, the Legislative

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

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

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

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

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

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

(c) The names of the initial directors and their terms of service, which shall not exceed six years. At least one director shall also be a member of the governing body. Such director shall serve only so long as 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 employes and agents as it deems appropriate and provide for their compensation. [1973 c 153 §4, 1977 c 201 §5]

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

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

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

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

(3) To lease such hospital facilities to any one or more political subdivisions of this state or any private nonprofit corporations which are operating or propose to operate an inpatient care facility subject to the licensing and supervision requirements of ORS 441.015 to 441.087, 441.525 to 441.595, 441.810 to 441.820, 441.990, 442.320, 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 loan money for the construction of and improvements to hospital facilities.

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

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

**441.555 Issuance of revenue obligations; nature of obligation; refunding.**

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

(2) The authority shall issue revenue obligations only by bond resolution duly adopted by its board of directors. The bond resolution shall specify the public purposes for which the proceeds of the revenue obligations shall be expended, declare the estimated cost of carrying out such purposes, contain such covenants, and provide for the issuance and sale of revenue obligations in such form and amount as the

directors determine. In declaring such cost, the directors may include the funds necessary for working capital during construction, reserves, interest during construction, the payment of organizational, planning, financing and legal expenses, the repayment of advances and the start-up costs. The bond resolution may provide that hospital facilities subsequently acquired or constructed by the authority shall be deemed betterments or additions to, or extensions of, the specified hospital facility, whether or not physically connected.

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

(4) Any revenue obligations issued against any fund or funds provided for in subsection (3) of this section shall be a valid claim of the holder thereof only as against such special fund or funds, the proportion or amount of the revenues pledged to such fund or funds and such assets as the authority may have pledged. Each such revenue obligation shall state on its face that it is payable from a special fund or funds, naming the fund or funds and the resolution creating it or them

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

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

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

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

(9) All revenue obligations issued pursuant to this section shall be legal securities which may be used by any 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, 1983 c 413 §2]

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

**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. However, nothing in this subsection is intended to prevent a resident from authorizing access to the resident's medical and personal records by another person.

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

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

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

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

(13) Able to keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights and unless medically contraindicated.

(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, 1981 c 326 §1]

**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 183.550, 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 or feeding as defined in ORS 441.705

(d) Failure to maintain the required staff to patient ratio, as defined in ORS 441.705, which may lead to physical harm.

(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, 1981 c 470 §7, 1981 c 784 §22]

**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 re-

quired 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, 678.155 and 678.445, 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) Notwithstanding the provisions of ORS 192.410 to 192.500, photographs taken under authority of subsection (1) of this section shall not be considered records. [1979 c 770 §7, 1981 c 470 §6]

**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** [1979 c 770 §9, repealed by 1981 c 470 §1 (441 671 enacted in lieu of 441 670)]

**441.671 Confidentiality of reports; when available.** (1) Notwithstanding the provisions of ORS 192.410 to 192.500, the names of complainants and patients compiled under the provisions of ORS 441.640 to 441.660 are confidential and are not accessible for public inspection. However, the division shall make the information available to any law enforcement agency, to any public agency which licenses or certifies long term care facilities or licenses or certifies the persons practicing the healing arts therein and to the Long Term Care Ombudsman.

(2) Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.500 apply to all records and reports compiled under ORS 441.640 to 441.665. [1981 c 470 §2 (enacted in lieu of 441 670)]

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

**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]

### (Investigation of Complaints)

**441.690 Complainant may accompany investigator.** Upon the request of any person filing a complaint to be investigated by the Health Division or the Department of Human Resources against a long term care facility, as defined in ORS 442.015, or against a residential care facility, as defined in ORS 443.400 (8), the complainant or a designee thereof, or both, shall be allowed to accompany an investigator to the site of the alleged violation. [1981 c 241 §1]

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

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

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

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

(4) Write a report which includes:

(a) The investigator's personal observations;

(b) A review of documents and records;

(c) A summary of all witness statements; and

(d) A statement of the basis for the finding.

[1981 c 241 §2]

### (Access)

**441.700 Access to facilities by persons providing services.** (1) Long term care facilities, as defined in ORS 442.015, and residential care facilities, as defined in ORS 443.400 (8), subject to ORS 441.605 (11), shall permit individuals and representatives of community service organizations, including community legal services programs, whose purpose is rendering service without charge to residents, to have full and free access to the facility during reasonable visiting hours to:

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

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

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

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

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

(3) As used in this section, "full and free access" means access to the fullest extent possible without undue adverse interference on the operation of the facility. [1981 c 99 §1]

#### (Complaint File)

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

- (a) The complaint file number.
- (b) The category of the complaint, whether staffing, food, patient care or other.
- (c) A brief description of the complaint.
- (d) The Health Division's finding.
- (e) Action taken by the division.
- (f) Fines assessed, if any.
- (g) Fines paid, if any.

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

(3) The information described in subsections (1) and (2) of this section shall be noted in summary form on annual cover sheets for the file on a particular facility. The cover sheets shall not contain any of the information made confidential under ORS 441.670. Copies of the cover sheets shall be made available to the public at cost on request. Upon such request, the division shall provide only copies of the cover sheets

described in subsection (1) of this section unless the information described in subsection (2) of this section is specifically requested

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

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"NOTICE: This cover sheet does not contain information on complaints that the Health Division considers unsupported by findings or on complaints still under investigation by the division. The division will make information regarding such complaints available upon request."

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

#### (Reimbursement System)

**441.704 Legislative finding on patient based reimbursement system; description of system.** The Legislative Assembly finds and declares that patients admitted to and cared for by long term care facilities in Oregon are more severely dependent and seriously ill than at any other time in Oregon's history. In keeping with the traditional commitment of the State of Oregon to the care and protection of its frail elderly and handicapped citizens, the Legislative Assembly declares that a patient based reimbursement system is appropriate for long term care facilities. Such a system should include:

(1) Reimbursement for direct patient care according to the needs of the patient, based on multiple levels of patient health, functioning and impairment;

(2) Separate account categories for direct patient care and dietary services, prohibiting transfer of funds from such categories to any other account category;

(3) Reimbursement for adequate care staffing; and

(4) Reimbursement for nursing care management of patient care by registered nurses. [1983 c 484 §1]

**Note:** 441.704 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 2, chapter 484, Oregon Laws 1983, provides

**Sec. 2.** The Senior Services Division is directed to implement the policy of this Act on or before January 1,

1984 Modifications of this policy may be made pursuant to ORS 291.322 to 291.336

### 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, 442.320, 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 patient 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 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, 442.320, 442.340 to 442.350 and 442.400 to 442.450 for a long term care facility, as defined in ORS 442.015.

(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 pre-

scribe 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, 1983 c 740 §159]

**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 183.550. [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 ORS 441.710 (1), 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 the term in ORS 442 015 [Formerly 441 515, 1977 c 173 §1, 1983 c 740 §160]

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

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

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

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

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

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

(2) As used in this section:

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

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

**Note:** 441 825 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

## PENALTIES

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

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

(b) Violation of ORS 441.815 (2) or (3) is a 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 ORS 441.087 (1) 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]