

Chapter 442

1985 REPLACEMENT PART

Health Planning

ADMINISTRATION

- 442 015 Definitions
- 442.025 Findings and policy
- 442 035 Oregon Health Council; qualifications, terms, officers, meetings, compensation and expenses
- 442 045 Council duties and powers
- 442 057 Council subcommittees and advisory committees
- 442 085 State Health Planning and Development Agency, director, dismissal procedure, appointment of staff
- 442 095 State agency duties
- 442 105 Contracts for administration of laws, terms and conditions
- 442 110 State agency as agency to apply for and receive federal funds
- 442 120 Hospital discharge abstract records, alternative data

HOSPITAL UTILIZATION STUDY

(Temporary provisions relating to hospital utilization study are compiled as notes following ORS 442 120)

HEALTH SYSTEMS AGENCIES

- 442 150 Health systems plans to be submitted to state agency
- 442 155 Health systems agencies, functions
- 442 160 Health systems agency membership

CERTIFICATES OF NEED FOR HEALTH SERVICES

- 442 320 When certificate required, application, fee, review
- 442.325 Health care facility or health maintenance organization certificates, exempt activities, certain activities subject to insurance laws, policy to encourage health maintenance organizations
- 442 335 Review of applications, time for review, notice
- 442 340 Issuance, criteria, hearing, reconsideration and review of determinations, revocation or rescission, application of statutes
- 442 342 Waiver of requirements of ORS 442 320 to 442 340
- 442 345 Injunctive relief, investigation
- 442 350 Federal aid, disposition of funds received
- 442 360 Certificate of Need Appeals Board, members, terms, officers, compensation and expenses

HEALTH CARE COST REVIEW

- 442.400 "Health care facility" defined
- 442.405 Legislative findings and policy
- 442 410 Facilities required to file budget and rate documents, effective date of rate increases, effect of failure to file increase, public inspection of rate schedules
- 442 415 Effect of service reductions on rates, markup on supplies and services, penalties not allowable in determining rates
- 442 420 Application for financial assistance, financial analysis and investigation authority; rules
- 442.425 Authority over accounting and reporting systems of facilities
- 442 430 Investigations, confidentiality of data
- 442 435 Investigation of facility financial status, cost review determinations; judicial review
- 442.440 Factors to be considered in determination of reasonableness of rates
- 442.445 Civil penalty for failure to perform
- 442 450 Exemption from cost review regulations
- 442 460 Information about physician charges on certain diagnosis-related groups
- 442 463 Annual utilization report, effect of failure to file report
- 442.465 Capital expenditure report
- 442 467 Monitoring expenditure targets
- 442 469 Categories for capital expenditures

RURAL HEALTH

- 442 470 Definitions for ORS 442 470 to 442 500
- 442 475 Office of Rural Health created
- 442 480 Rural Health Care Revolving Account
- 442 485 Responsibilities of Office of Rural Health
- 442 490 Rural Health Coordinating Council, membership; terms, officers, compensation and expenses
- 442.495 Responsibilities of council
- 442.500 Technical and financial assistance to rural communities

CROSS REFERENCES

- Administrative procedures and rules of state agencies, 183 310 to 183 550
- Discrimination prohibited, 30 670
- Health care cost containment system, medical assistance, 414 610 to 414 650

PUBLIC HEALTH AND SAFETY

442 015

Complaint procedure, 441 690, 441 695

"Health care facility", exception, 441 017

442 005 [1955 c 533 §2, 1973 c 754 §1, repealed by 1977 c 717 §23]

442 010 [Amended by 1955 c 533 §3, 1971 c 650 §20, repealed by 1977 c 717 §23]

ADMINISTRATION

442.015 Definitions. As used in ORS chapter 441 and this chapter, unless the context requires otherwise

(1) "Adjusted admission" means the sum of all inpatient admissions divided by the ratio of inpatient revenues to total patient revenues

(2) "Affected persons" has the same meaning as given to "party" in ORS 183 310 (6)

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

(4) "Audited actual experience" means data contained within financial statements examined by an independent, certified public accountant in accordance with generally accepted auditing standards

(5) "Budget" means the projections by the hospital for a specified future time period of expenditures and revenues with supporting statistical indicators

(6) "Case mix" means a calculated index for each hospital, based on financial accounting and case mix data collection as set forth in ORS 442 425, reflecting the relative costliness of that hospital's mix of cases compared to a state or national mix of cases.

(7) "Council" means the Oregon Health Council

(8) "Department" means the Department of Human Resources of the State of Oregon

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

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

(11) "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of a donation or grant in lieu of an expenditure but not including any interest thereon.

(12) "Federal Act" means the National Health Planning and Resources Development Act of 1974, Public Law 93-641, amendments to

the Federal Act and Public Law 96-79, and includes regulations issued thereunder as of August 19, 1981

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

(14) "Gross revenue" means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges and other operating revenue "Gross revenue" does not include contributions, donations, legacies or bequests made to a hospital without restriction by the donors

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

(16) "Health care facility" means

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

(b) A "hospital associated ambulatory surgery center" means an ambulatory surgical service that is separately identifiable, physically, administratively and financially independent, distinct from other operations of the hospital, and is not located proximate to or adjoining the hospital's campus The hospital associated ambulatory surgery center performs surgery not routinely or customarily performed in the physician's or dentist's office, and is able to meet health facility licensure requirements

(c) A "long term care facility" with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the division, to provide treatment for two or more unrelated patients "Long term care facility" includes the terms "skilled nursing facility" and "intermediate care facility," but such definition shall not be construed to include facilities licensed and operated pursuant to ORS 443 400 to 443 455 Such definitions shall include

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

rehabilitation services for the rehabilitation of injured, disabled or sick persons

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

(d) A "special inpatient care facility" with permanent inpatient beds and other facilities designed and utilized for special health care purposes, to include but not limited to Rehabilitation center, college infirmary, chiropractic facility, facility for the treatment of alcoholism, or inpatient care facility meeting the requirements of ORS 441 065, and any other establishment falling within a classification established by the division, after determination of the need for such classification and the level and kind of health care appropriate for such classification

(e) An "ambulatory surgical center" means a health care facility not sponsored by a hospital which performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements

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

(g) A "health care facility" does not mean an establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Mental Health Division, Senior Services Division, Children's Services Division, Corrections Division or Vocational Rehabilitation Division

(h) A "freestanding birthing center" means a health care facility licensed for the primary purpose of performing low risk deliveries

(17) "Health maintenance organization" or "HMO" means a public organization or a private organization organized under the laws of any state which

(a) Is a qualified HMO under section 1310 (d) of the U S Public Health Services Act, or

(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services Usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area coverage,

(B) Is compensated, except for copayments, for the provision of the basic health care services listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic rate basis, and

(C) Provides physicians' services primarily directly through physicians who are either employes or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis

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

(19) "Health services" means clinically related diagnostic, treatment or rehabilitative services, and includes alcohol, drug or controlled substance abuse and mental health services that may be provided either directly or indirectly on an inpatient or ambulatory patient basis

(20) "Hospital performance measurement" means the maximum rate at which a hospital is expected to increase its average gross revenues per adjusted admission for a given period The "hospital performance measurement" is composed of the market basket index which is defined as follows

(a) "Market basket index" means the revised market basket index used to measure the inflation in hospital input prices as employed on January 1, 1985, by the Secretary of the United States Department of Health and Human Services for Medicare reimbursement If the Secretary of the United States Department of Health and Human Services employs a regional index to measure the inflation in hospital input prices for purposes of Medicare reimbursement, the term means such index for the region including Oregon If the measure described in this paragraph ceases to be calculated in this manner, the inflation index shall be the index approved by rule adopted by the agency The methodology used in determining the index approved by rule shall be substantially the same as the methodology employed on January 1, 1985, for determining the inflation in hospital input prices by the Secretary of the United States Department of Health and Human Services for purposes of Medicare reimbursement

(b) "Plus points" means additional percentage points added to the market basket index to adjust for the Oregon specific experience

(21) "Institutional health services" means health services provided in or through health care

facilities and includes the entities in or through which such services are provided

(22) "Medically indigent" means a person who has insufficient resources or assets to pay for needed medical care without utilizing resources required to meet basic needs for shelter, food and clothing

(23) "Net revenue" means gross revenue minus deductions from revenue

(24) "New health service" has the meaning given the term "institutional health services" in subsection (21) of this section and includes

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

(b) Any capital expenditure, other than an expenditure for major medical equipment, for health services by or on behalf of a health care facility which expenditure exceeds the lesser of

(A) \$1 million plus an index factor to reflect construction costs, or

(B) \$250,000, and one-half of one percent of the gross revenues for the last complete fiscal year

(c) "New health service" does not include a capital expenditure for site acquisition or acquisition of a health care facility

(d) An increase in bed capacity of a health care facility which increases the number of beds by more than 10 beds or more than 10 percent of the bed capacity, as defined by the state agency, whichever is less, within a two-year period, or the relocation of beds from one licensed health care facility to another

(e) Health services, except home health services, residential care or treatment of the elderly and residential or outpatient services for alcoholism, drug abuse or mental or emotional disturbances, as specified by state agency rule under ORS 442 320 (2)(a), which were not offered on a regular basis in or through such health care facility either directly or indirectly by contract within the 12-month period prior to the time such health services would be offered, and which could significantly add to the cost of patient care or compromise quality of care

(25) "Major medical equipment" means medical equipment which is used to provide medical and other health services and which costs more than \$1 million "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of

the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act

(26) "Nonclinically related capital expenditures" means an expenditure connected with providing a health service but which does not provide any health service although it will have substantial impact on the cost of health services to the patient

(27) "Offer" means that the health care facility holds itself out as capable of providing, or as having the means for the provision of, specified health services

(28) "Office" means the Office of Rural Health, a component of, and contained within, the state agency

(29) "Operating expenses" means the sum of daily hospital service expenses, ambulatory service expenses, ancillary expenses and other operating expenses, excluding income taxes

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

(31) "Secretary" means the Secretary of the United States Department of Health and Human Services

(32) "State agency" means the State Health Planning and Development Agency having the functions and authorities as established by this chapter and the Federal Act.

(33) "Total deductions from gross revenue" or "deductions from revenue" means reductions from gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts and adjustments and other such revenue deductions. The deduction shall be net of the offset of restricted donations and grants for indigent care [1977 c 751 §1, 1979 c 697 §2, 1979 c 744 §31, 1981 c 693 §1, 1983 c 482 §1, 1985 c 747 §16]

442 020 [Amended by 1955 c 533 §4, 1973 c 754 §2, repealed by 1977 c 717 §23]

442.025 Findings and policy. (1) The Legislative Assembly finds that the achievement of reasonable access to quality health care at a reasonable cost is a priority of the State of Oregon

(2) Problems preventing the priority in subsection (1) of this section from being attained include

(a) The inability of many citizens to pay for necessary health care, being covered neither by private insurance nor by publicly funded programs such as Medicare and Medicaid;

(b) Rising costs of medical care which exceed substantially the general rate of inflation,

(c) Insufficient price competition in the delivery of health care services that would provide a greater cost consciousness among providers, payors and consumers,

(d) Inadequate incentives for the use of less costly and more appropriate alternative levels of health care,

(e) Insufficient or inappropriate use of existing capacity, duplicated services and failure to use less costly alternatives in meeting significant health needs, and

(f) Insufficient primary and emergency medical care services in some rural areas of the state

(3) As a result of rising health care costs and the concern expressed by health care providers, health care users, third-party payors and the general public, there is an urgent need to abate these rising costs so as to place the cost of health care within reach of all Oregonians without affecting the quality of care

(4) To foster the cooperation of the separate industry forces, there is a need to compile and disseminate accurate and current data, including but not limited to price and utilization data, to meet the needs of the people of Oregon and improve the appropriate usage of health care services

(5) It is the purpose of this chapter to establish area-wide and state planning for health services, staff and facilities in light of the findings of subsection (1) of this section and in furtherance of health planning policies of this state

(6) It is further declared that hospital costs should be contained through improved competition between hospitals and improved competition between insurers and through financial incentives on behalf of providers, insurers and consumers to contain costs. As a safety net, it is the intent of the Legislative Assembly to monitor hospital performance during the 1985-1987 biennium so that controls over hospital operating and capital expenditures can be established in the event that competition-oriented methods do not adequately contain costs and the access of Oregonians to adequate hospital care becomes jeopardized because of unaffordable costs [1977 c 751 §2, 1981 c 693 §2, 1983 c 482 §2, 1985 c 747 §1]

442 030 [Amended by 1955 c 533 §5, 1961 c 316 §8, 1967 c 89 §4, repealed by 1977 c 717 §23]

442.035 Oregon Health Council; qualifications; terms; officers; meetings; compensation and expenses. (1) There is established the Oregon Health Council to serve as the policy-making body responsible for health planning pursuant to this chapter

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

(a) The council shall have 15 members appointed by the Governor

(b) The membership of the Oregon Health Council shall broadly represent the geographic, social, economic, linguistic and racial population of the state and shall include at least two members from each health service area of the state, at least one of whom shall be a health systems agency board member or its designee, selected from nominees submitted by the health systems agency board, if such board exists

(c) Membership on the council shall include individuals who represent Oregon's rural and urban medically underserved populations

(d) The membership of the Oregon Health Council shall be a consumer majority of voting members and shall include direct providers of health care

(e) When there are one or more hospitals or other health care facilities of the Veterans Administration within the state, the council shall also include as a member a nonvoting individual whom the Chief Medical Director of the United States Veterans Administration designates to represent such facilities

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

(g) Except for the representative of the Veterans Administration

(A) Members shall be appointed to three-year terms.

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

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

(4) Members shall select a chairperson and a vice chairperson from among themselves

(5) The council shall meet at least quarterly

(6) Members are entitled to compensation and expenses as provided in ORS 292 495.

(7) Vacancies on the council shall be filled by appointments of the Governor for the unexpired

term. If a vacancy is in a position occupied by a nominee of a health systems agency, the Governor shall request such health systems agency to submit up to three names to the Governor to fill the vacancy. Such nominations must qualify to fill the same general category of representation as was held by the former member in order to maintain the same council membership composition [1977 c 751 §3, 1979 c 697 §3, 1981 c 693 §3, 1983 c 482 §3, 1985 c 747 §4]

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

442.045 Council duties and powers.

The Oregon Health Council shall perform the following functions

(1) Act as the policy-making body for a state-wide health data clearinghouse established within the agency for the acquisition, compilation, correlation and dissemination of data from health care providers, the state Medicaid program, third-party payers and other appropriate sources in furtherance of the purpose and intent of the Legislative Assembly as expressed in ORS 442.025

(2) Provide a forum for discussion of critical health issues facing the citizens of the State of Oregon

(3) Identify and analyze significant health care issues affecting the state and make policy recommendations to the Governor

(4) Annually prepare, review, revise as necessary, and adopt a state health plan which shall be made up of the health systems plans of the health systems agencies and such state agency health plans as the council deems appropriate. The plan, as found necessary by the council, may contain revisions of the health systems plans to achieve their appropriate coordination or to deal more effectively with state-wide health needs. In the preparation and revision of the state health plan, the council shall review and consider recommended revisions submitted by the State Health Planning and Development Agency

(5) Review annually the grant applications of each health systems agency and the state agency and report to the secretary.

(6) Advise the state agency generally on the performance of its functions

(7) Review annually and approve or disapprove any state plan and any application, and any revision of a state plan or application, submitted to the Secretary of Health and Human Services as a condition to the receipt of any funds under allotments made to states under the Federal Act, the Community Mental Health Centers Act or

the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970

(8) Provide such reports to the Secretary of Health and Human Services as may be required.

(9) Review biennial budgets of the State Health Planning and Development Agency, Mental Health Division, Adult and Family Services Division, Senior Services Division and Health Division and submit comments to the Executive Department

(10) Serve as the Certificate of Need Appeals Board on issues involving certificate of need as provided in ORS 442.320, 442.340 and 442.360 for appeals filed after July 13, 1985

(11) Perform all other functions authorized or required by state law [1977 c 751 §4, 1981 c 693 §4, 1983 c 482 §4, 1985 c 187 §1, 1985 c 747 §5]

442.050 [Amended by 1957 c 697 §3, 1969 c 535 §2, 1973 c 754 §4, 1977 c 284 §50, repealed by 1977 c 717 §23]

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

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

442.057 Council subcommittees and advisory committees. The Oregon Health Council may establish subcommittees and may appoint advisory committees to advise it in carrying out its duties. Members of advisory committees shall not be eligible for compensation but shall be entitled to receive actual and necessary travel and other expenses incurred in the performance of their official duties [1977 c 751 §15, 1981 c 693 §5]

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

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

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

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

442.080 [Repealed by 1977 c 717 §23]

442.085 State Health Planning and Development Agency; director; dismissal procedure; appointment of staff. (1) There is established a State Health Planning and Development Agency

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

(a) Be in the unclassified service

(b) Be responsible to the council pursuant to ORS 442.095

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

(3) Subject to the State Personnel Relations Law, the director shall appoint necessary staff [1977 c 751 §5, 1981 c 693 §6]

442 090 [Repealed by 1955 c 533 §10]

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

(1) Administer the health planning activities of the council pursuant to this chapter, and coordinate the health planning activities of state government

(2) Propose revisions to the state health plan which shall be made up of the health systems plans of the health systems agencies in the state

(3) Assist the council in the performance of its functions generally and provide staff services to the council or subcommittees thereof on the conduct of its duties, including routine administrative support under the policy direction of the council

(4) Conduct the administrative and regulatory functions necessary to implement the policies and directives of the council adopted pursuant to state law.

(5) Serve as the designated planning agency of the state for purposes of section 1122 of the federal Social Security Act if the state has made an agreement pursuant to that section

(6) Control health care capital expenditures by administering the state certificate of need program pursuant to ORS 442 320 to 442 360

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

(8) Administer the health care cost review program pursuant to ORS 442 400 to 442 445 and the hospital performance measurement system pursuant to section 42, chapter 747, Oregon Laws 1985

(9) Exercise the authority arising out of the policy decisions of the council

(10) Provide reports to the Secretary of Health and Human Services

(11) Research and analyze critical health care issues leading to the preparation and dissemination

of health policy papers for the Governor, Legislative Assembly, state agencies and other entities

(12) Maintain health data systems to assure that accurate and timely information is available to help guide the decisions of health policy makers and planners

(13) Perform other functions required by state law.

(14) Adopt rules regarding appropriate construction indexes

(15) Except as otherwise provided by law and in accordance with any applicable provisions of ORS 183.310 to 183.550, the state agency may make such rules as are necessary or proper for the administration or enforcement of the laws the state agency is charged with administering or enforcing

(16) Publish periodically a comparative report and a brochure of hospital and physician charges, containing a simple and concise comparison of such charges by geographic areas of average charges for the most common diagnoses. The report and brochure shall contain such explanations of differences among hospitals relating to unreimbursed care, cost of educational programs, case mix differences, and other factors as the agency believes appropriate [1977 c 751 §6, 1981 c 693 §7, 1983 c 482 §5, 1985 c 747 §7]

442 100 [1977 c 751 §7, repealed by 1981 c 693 §31]

442.105 Contracts for administration of laws; terms and conditions. (1) In carrying out its duties, the state agency is authorized to contract with a health systems agency and any other governmental or private agency which the state agency deems necessary. The state agency shall reimburse such contracting agency, from funds authorized or appropriated to it in a manner consistent with state and federal law

(2) The state agency shall prescribe the manner and form of performance which it shall require of contractors pursuant to subsection (1) of this section. Such contractors shall agree to accept such performance standards as the state agency shall prescribe for purposes of this section [1977 c 751 §38, 1981 c 693 §8, 1983 c 482 §6]

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

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

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

(b) Administer plans for those purposes. Such plans shall be made state wide in application in so far as reasonably feasible, possible or permissible, and shall be so devised as to meet the approval of the Federal Government or any of its agencies, not inconsistent with the laws of the state [Formerly 431 250 (3), (4)]

442.120 Hospital discharge abstract records; alternative data. In order to provide data essential for health planning programs

(1) The state agency may request, by July 1 of each year, each general hospital to file with the state agency hospital discharge abstract records covering all inpatients discharged during the preceding calendar year. The hospital discharge abstract record for each patient shall include at least the following information

- (a) Date of birth,
- (b) Sex,
- (c) Zip code,
- (d) Admission date,
- (e) Discharge date,
- (f) Type of discharge,
- (g) Diagnostic related group,
- (h) Type of surgical procedure performed,
- (i) Expected source of payment, if available,
- (j) Hospital identification number, and
- (k) Total hospital charges

(2) In lieu of abstracting and compiling the discharge abstract records itself, the state agency may solicit the voluntary submission of such data from Oregon hospitals or other sources to enable it to carry out its responsibilities under this section. If such data is not available to the state agency on an annual and timely basis, the state agency may establish by rule a hospital discharge fee to be charged each hospital

(3) Subject to the review of the Executive Department and the prior approval of the appropriate legislative review agency, the fee established under subsection (2) of this section shall not exceed the cost of abstracting and compiling the discharge abstract records

(4) The state agency may specify by rule the form in which the hospital discharge abstract records are to be submitted. If the form adopted

by rule requires conversion from the form regularly used by a hospital, reasonable costs of such conversion shall be paid by the state agency

(5) No patient identifier shall be included with the hospital discharge abstract record to insure that patient confidentiality is maintained

(6) In addition to the records required in subsection (1) of this section, the state agency may obtain hospital discharge abstract records for each patient which identify specific services, classified by International Classification of Disease Code, for special studies on the incidence of specific health problems or diagnostic practices. However, nothing in this subsection shall authorize the publication of such specific data with patient, physician or hospital identifiers

(7) The state agency may provide by rule for the submission of records for enrollees in a health maintenance organization from a hospital associated with such an organization in such form as the agency determines appropriate to the agency's needs for such data and the organization's record keeping and reporting systems for charges and services [Formerly 442 355]

HOSPITAL UTILIZATION STUDY

Note Chapter 587, Oregon Laws 1983, provides

Sec. 1. The Legislative Assembly finds that hospital utilization, in terms of days per 1,000 persons, varies widely throughout the state, and that studies indicate that a portion of elevated hospital utilization in some areas may reflect insufficient availability and utilization of less costly and more appropriate alternative levels and types of care

Sec. 2 The Legislative Assembly further finds that, in order to provide incentives to increase the availability and utilization of alternative levels and types of care, while encouraging a more selective approach to hospital utilization throughout the state, periodic public reporting of hospital utilization statistics, according to patient origin in each part of the state, is essential

Sec. 3 In addition, the Legislative Assembly finds that information described in section 2 of this Act is necessary so that

(1) The Adult and Family Services Division may implement, monitor and evaluate adjustments to provide payments based on utilization efficiency under the Oregon Health Care Cost Containment System referred to in chapter 590, Oregon Laws 1983,

(2) Providers can develop financially prudent bids to the Adult and Family Services Division under the Oregon Health Care Cost Containment System,

(3) The State Health Planning and Development Agency can properly review applications for certificate of need, as required, against the efficiency and utilization of existing systems of health care in each part of the state, and

(4) The Legislative Assembly's interim committees shall have adequate information on the efficiency of health care

utilization throughout the state, as a basis for estimating the impact and side effects of any proposed cost containment mechanisms and related interventions

Sec 4 The Legislative Assembly therefore directs the State Health Planning and Development Agency, utilizing the results of each annual full-year state-wide hospital patient origin study conducted under the authority of section 12, chapter 482, Oregon Laws 1983, to prepare and make available annual reports. The reports shall include data, analyses and narrative indicating, for each county, both overall and age-specific utilization rates per 1,000 persons. The results shall be further subdivided, according to source of payment, so as to permit comparison of the effectiveness of the various provider and payor utilization control mechanisms which may be in place throughout the state.

Sec 5 The Legislative Assembly further directs the State Health Planning and Development Agency, with the advice of the health systems agencies, a broadly representative technical task force and the Oregon Health Council, to prepare annual reports describing alternative utilization control mechanisms and their theoretical and actual success in relation to the costs of implementation and operation.

Sec 6 The Legislative Assembly directs the State Health Planning and Development Agency, with the advice of the health systems agencies, a broadly representative technical task force and the Oregon Health Council, to prepare annual reports describing and evaluating alternative methods for adjusting provider payments, based on utilization efficiency, which give less efficient providers reasonable incentives for improvement, while at the same time giving adequate recognition and compensation to those providers who are already efficient.

Sec 7 This Act is repealed on June 30, 1987.

HEALTH SYSTEMS AGENCIES

442.150 Health systems plans to be submitted to state agency. All health systems plans and annual implementation plans shall be submitted for review and possible modification to the State Health Planning and Development Agency [1977 c 751 §10]

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

(2) Health systems agencies shall

(a) Establish, annually review and amend as necessary a health systems plan which shall be a detailed statement of goals describing a healthful environment and health systems in the area which, when developed, will promote the availability and accessibility of quality health services in a manner which promotes continuity of care at reasonable costs for all residents of the area and which are responsive to the unique needs and resources of the area

(b) Establish, annually review and amend as necessary an annual implementation plan which

describes objectives which will achieve the goals of the health systems plan and priorities among the objectives

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

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

(e) Assist employers in the formation of health care coalitions around the state

(f) Serve as a clearinghouse for information concerning innovations in the delivery of health care services and the enhancement of competition in the health care market place

(g) Work with existing health coalitions and local health councils in carrying out their respective goals in an efficient and effective manner

(h) Perform all other functions authorized or required by the Federal Act [1977 c 751 §11, 1983 c 482 §7, 1985 c 747 §6]

442.160 Health systems agency membership. The health systems agency shall have a health care consumer majority and include health care provider and locally elected officials. Membership must comply with the requirements of the Federal Act [1977 c 751 §12]

442 165 [1977 c 751 §13, 1981 c 693 §9, repealed by 1983 c 482 §23]

442 170 [1977 c 751 §14, repealed by 1983 c 482 §23]

CERTIFICATES OF NEED FOR HEALTH SERVICES

442 300 [Formerly 441 010, repealed by 1981 c 693 §31]

442.320 When certificate required; application; fee; review. (1) The following shall obtain a certificate of need from the state agency prior to an offering or development

(a) Any person not excluded pursuant to ORS 441 065 and 442 340 (7) and any health care facilities of any health maintenance organization proposing to offer or develop a new health service

(b) Any person acquiring or making or obligating an expenditure for major medical equipment not excluded pursuant to ORS 441 065

(c) Any person not excluded pursuant to ORS 441 065 and 442 340 (7) making or obligating a nonclinically related capital expenditure.

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

(b) The state agency shall adopt rules providing for accelerated review or waiver of review of a proposed expenditure for repairs or replacement of plant or equipment, nonclinically related capital expenditures, or when the offering or development of a new health service is of a nonsubstantive nature

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

(d) A series of projects having a health service related linkage, which in the aggregate exceeds the limits described in ORS 442 015 (24) over the whole project period, shall not be offered or developed without a certificate of need having first been obtained

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

(b) An applicant shall pay a fee prescribed as provided in this section Subject to the approval of the Executive Department, the state agency shall prescribe application fees, based on the complexity and scope of the proposed project, not to exceed \$6,000

(c) In the event a public hearing is held pursuant to ORS 183 310 to 183 550, the state agency may impose a fee equally on the parties to the hearing In no case shall the fees assessed pursuant to this paragraph exceed the costs of the public hearing incurred by the state agency, except as provided in paragraph (d) of this subsection

(d) Notwithstanding the provisions of paragraphs (b) and (c) of this subsection, the state agency and the parties to the hearing held pursuant to ORS 183 310 to 183 550 shall share equally in the cost of preparation of a transcript of record, if any

(e) Fees derived under this section shall be continuously appropriated to the state agency and may be expended by the state agency for the administration of this section and ORS 442 340

(4) The state agency shall adopt rules governing the reporting, by all persons not excluded pursuant to ORS 441 065 and 442 340 (7), of their intent to offer or develop a new health service during the succeeding 12 months, and the general nature of such new health service Such a report shall be submitted to the state agency and respective health systems agency

(5) To assist it in carrying out its responsibility to control unwarranted capital expenditures through the certificate of need program, the state agency may, in order to consider an application

with other applications concerning health services, facilities or equipment for the same area, delay consideration of an application for a reasonable time not to exceed 180 days [Formerly 441 090, 1979 c 697 §4, 1981 c 693 §10, 1983 c 482 §8, 1985 c 747 §31]

442.325 Health care facility or health maintenance organization certificates; exempt activities; certain activities subject to insurance laws; policy to encourage health maintenance organizations. (1) A certificate of need shall be required for the development or establishment of a health care facility of any new health maintenance organization.

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

(3) Nothing in ORS 244 050, 431 250, 441 015 to 441 087, 442 015 to 442 420, 442 435 and 442 450 applies to any decision of a health maintenance organization involving its organizational structure, its arrangements for financing health services, the terms of its contracts with enrolled beneficiaries or its scope of benefits

(4) With the exception of certificate of need requirements, when applicable, the licensing and regulation of health maintenance organizations shall be controlled by ORS 750 005 to 750 065 and statutes incorporated by reference therein

(5) It is the policy of ORS 244 050, 431.250, 441 015 to 441 087, 442 015 to 442.420, 442 435 and 442 450 to encourage the growth of health maintenance organizations as an alternative delivery system and to provide the facilities for the provision of quality health care to the present and future members who may enroll within their defined service area

(6)(a) It is also the policy of ORS 244 050, 431 250, 441 015 to 441 087, 442 015 to 442 420, 442 435 and 442 450 to consider the special needs and circumstances of health maintenance organizations Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services The consideration of a new health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new health service from the existing

providers in the area that are not health maintenance organizations

(b) The agency shall issue a certificate of need for beds, services or equipment to meet the needs or reasonably anticipated needs of members of health maintenance organizations when beds, services or equipment are not available from nonplan providers [1977 c 751 §56, 1981 c 693 §11]

442.330 [Formerly 441.092, 1979 c 697 §5, repealed by 1981 c 693 §31]

442.335 Review of applications; time for review; notice. (1) The state agency shall be the decision-making authority for the purposes of certificates of need

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

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

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

(4) At the same time that the state agency notifies the applicant for a certificate of need, and the appropriate health systems agency, of its decision, it shall notify the council [1977 c 751 §8, 1981 c 693 §12, 1983 c 482 §9]

442.340 Issuance; criteria; hearing; reconsideration and review of determinations; revocation or rescission; application of statutes. (1) The state agency shall issue a certificate of need for all or part of the new health services applied for in the application if the need is confirmed by an evaluation of the criteria in subsection (2) of this section

(2) In making determinations regarding an application for a certificate of need, the state agency and health systems agency shall make specific findings regarding

(a) The need for the proposed project, including

(A) The service area population's need for the proposed project

(B) Significant functional inefficiency, obsolescence or structural problems which the facility has which seriously compromise the effective delivery of health care to patients

(C) The effect of the proposed project on patients' reasonable access to services

(D) The effect of travel on a patient's health condition or outcome if the proposed health services, beds or equipment are not available in the area served or to be served

(E) The special service area populations and health care utilization rates of the following

(i) Health maintenance organizations

(ii) Health care facilities or services which provide a substantial portion of their health services to individuals residing more than 50 miles away from the facility by road

(iii) Health care facilities established or operated by a religious body or denomination to provide for the care and treatment of members of the religious body or denomination in accordance with their religious or ethical convictions, when these religious or ethical convictions demonstrably preclude use of established health care facilities in the area

(b) The relationship of the project being reviewed and its conformance to such of the following plans as are in existence at the time of the review

(A) State health plan as approved by the council

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

(C) Long-range development plan of the project proponent

(c) The availability of resources for the provision of necessary health services and the availability of alternative uses for such resources for the provision of other health services, including

(A) The availability of allopathic and osteopathic facilities and services to protect the freedom of choice of the patient in the area served

(B) The relationship of the proposed project being reviewed to the efficiency and utilization of the existing health care system of the area in which health services are provided or proposed to be provided

(C) The conformity to state standards of both the proposed project and existing health services or major medical equipment which are currently serving the area

(D) The availability of adequate less costly alternatives or more effective methods of meeting the identified needs in the area

(E) Demonstration that the proposed project is the most appropriate way to use the resources which are proposed to be allocated to it

(F) Availability of qualified personnel to support the proposed project, adequacy of land to develop the proposed project and capacity to provide or secure funding for the proposed project if a certificate of need is issued

(G) The ability of the institution to maintain its status as a training facility for general and family practice physicians.

(d) The immediate and long-term financial impact of the proposed project on the institution and the community, including

(A) The financial condition of the applicant and the impact of the proposed project on the institution. Levels of profitability, patient charges and staffing may be considered with respect to the proposed project, the health care facility as a whole, or both

(B) The impact of the proposed project on the cost of health care to the patient including consideration of travel costs to the patient

(C) The relationship of the expense of providing the proposed service to its proposed or actual charges to patients, compared to other similar services in the area

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

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

(5)(a) An applicant, health systems agency or any affected person who is dissatisfied with the proposed decision of the state agency, is entitled to an informal hearing in the course of review and before a final decision is rendered

(b) Following a final decision being rendered by the state agency, an applicant, health systems agency or any affected person may request a reconsideration hearing pursuant to ORS 183 310 to 183.550

(c) An appeal before the appeals board pursuant to ORS 442 360, whose decision, based upon substantial evidence and made by not fewer than three members, shall be final subject to judicial review pursuant to ORS 183 310 to 183 550

(d) A request for a hearing pursuant to paragraph (a) of this subsection must be received by the state agency within 10 days after service of the proposed decision of the state agency

(e) A request for a hearing pursuant to paragraph (b) of this subsection must be received by the state agency within 30 days after service of the final decision

(f) In any proceeding brought by an affected person, an applicant or a health systems agency challenging a state agency decision under this subsection, the state agency shall follow procedures consistent with ORS 442 015 to 442 345 and the provisions of ORS 183 310 to 183.550 relating to a contested case

(g) An applicant, health systems agency or any affected person may exercise its right to either paragraph (b) or (c) of this subsection or both or neither. Failure to exercise paragraph (b) or (c) of this subsection shall not prejudice an applicant, health systems agency or affected person's right to judicial review pursuant to ORS 183 310 to 183 550

(h) Procedures under paragraphs (b) and (c) of this subsection shall be consistent with the contested case hearing as defined in ORS 183 413 to 183 470 and shall include admission of oral direct evidence. The hearings officer or board may limit the issues and may exclude irrelevant or redundant evidence. The director, hearings officer and board have power to issue notices and subpoenas in the name of the state agency, compel the attendance of witnesses and the production of evidence, administer oaths, hold hearings and perform such other acts as are reasonably necessary to carry out their duties under this section

(6) Once a certificate of need has been issued, it may not be revoked or rescinded unless it was acquired by fraud or deceit. However, if the state agency finds that a person is offering or developing a project that is not within the scope of the certificate of need, the state agency may limit the project as specified in the issued certificate of need, reconsider the application, or take action as provided in ORS 442.345.

(7)(a) The provisions of ORS 442 320 and this section do not apply to

(A) A sole or group medical practice that is not within the definitions of "health care facility," "new health service," or "health maintenance organization" in ORS 442 015 unless a capital expenditure for major medical equipment is proposed

(B) A low volume freestanding birthing center which has been excluded by agency rule.

(C) An applicant for licensure as a freestanding birthing center which provided such care prior to July 13, 1985

(b) A hospital is not required to apply for a certificate of need if it is not the purchaser of the major medical equipment and the equipment is not located in the hospital

(8)(a) A certificate of need issued pursuant to this section shall be automatically canceled 12 months from its effective date unless

(A) Extended pursuant to paragraph (c) of this subsection, or

(B) The project covered by such certificate is substantially implemented

(b) The expiration date of a substantially implemented certificate of need shall coincide with completion of the project for which it was issued

(c) For good cause shown, the state agency may grant two extensions of time, not to exceed six months each, if the project for which the certificate was issued has not been substantially implemented. An additional extension may be granted due to unusual and unforeseen circumstances which prevent substantial implementation within the period of the second extension

(9) The state agency may with respect to any approved certificate of need, impose such reporting requirements as are necessary to monitor for substantial implementation and to determine that the project conforms to the approved application. When a project is found to have substantially exceeded the scope of an approved certificate of need and the state agency has not approved the project changes or cost overrun, or both, the state agency may require full or accelerated certificate of need review

(10) A certificate of need shall not be bought, sold nor transferred either on its own or as part of a facility or health service purchase, sale or transfer [Formerly 441 095, 1979 c 174 §1, 1979 c 285 §2, 1979 c 697 §6, 1981 c 693 §13, 1983 c 482 §10, 1985 c 747 §33]

442.342 Waiver of requirements of ORS 442.320 to 442.340. (1) Notwithstanding any other provision of law, a hospital licensed under ORS 441 025, in accordance with rules adopted by the state agency, may apply for waiver from the provisions of ORS 442 320 to 442 340, and the agency shall grant such waiver if, for the most recently completed hospital fiscal year preceding the date of application for waiver and each succeeding fiscal year thereafter, the percentage of qualified inpatient revenue is not less than that described in subsection (2) of this section

(2)(a) The percentage of qualified inpatient revenue for the first year in which a hospital is granted a waiver under subsection (1) of this section shall not be less than 60 percent

(b) The percentage in paragraph (a) of this subsection shall be increased by five percentage points in each succeeding hospital fiscal year until the percentage of qualified inpatient revenue equals or exceeds 75 percent

(3) As used in this section

(a) "Qualified inpatient revenue" means payment received from public and private payers for inpatient hospital services approved by the agency pursuant to rules, including:

(A) Revenue received pursuant to Title XVIII, United States Social Security Act, when such revenue is based on diagnostic related group prices which include capital-related expenses or other risk-based payment programs as approved by the state agency,

(B) Revenue received pursuant to Title XIX, United States Social Security Act, when such revenue is based on diagnostic related group prices which include capital-related expenses,

(C) Revenue received under negotiated arrangements with public or private payers based on all-inclusive per diem rates for one or more hospital service categories,

(D) Revenue received under negotiated arrangements with public or private payers based on all-inclusive per discharge or per admission rates related to diagnostic related groups or other service or intensity-related measures,

(E) Revenue received under arrangements with one or more health maintenance organizations; or

(F) Other prospectively determined forms of inpatient hospital reimbursement approved in advance by the state agency in accordance with rules.

(b) "Percentage of qualified inpatient revenue" means qualified inpatient revenue divided by total gross inpatient revenue as defined by administrative rule of the state agency

(4)(a) The state agency shall hold a hearing to determine the cause if any hospital granted a waiver pursuant to subsection (1) of this section fails to reach the applicable percentage of qualified inpatient revenue in any subsequent fiscal year of the hospital

(b) If the agency finds that the failure was without just cause and that the hospital has undertaken projects that, except for the provisions of this section would have been subject to

ORS 442 320 to 442 340, the state agency shall impose one of the penalties outlined in paragraph (c) of this subsection

(c)(A) A one-time civil penalty of not less than \$25,000 or more than \$250,000, or

(B) An annual civil penalty equal to an amount not to exceed 110 percent of the net profit derived from such project or projects for a period not to exceed five years

(d) The decision of the agency may be appealed to the Certificate of Need Appeals Board pursuant to ORS 442 320 and 442 340

(5) Nothing in this section shall be construed to permit a hospital to develop a new inpatient hospital facility or provide new services authorized by facilities defined as "long term care facility" under ORS 442 015 under a waiver granted pursuant to subsection (1) of this section. [1985 c 747 §35]

Note: 442 342 was enacted into law by the Legislative Assembly and added to or made a part of ORS chapter 442 by legislative action but not to any series therein See Preface to Oregon Revised Statutes for further explanation

442.345 Injunctive relief; investigation. (1) In addition to any other remedy provided by law, whenever it appears that any person is engaged in, or is about to engage in, any acts which constitute a violation of ORS 442 320, 442 340, or any rule or order issued by the state agency, the state agency may institute proceedings in the circuit courts to enforce obedience to such statute, rule or order by injunction or by other processes, mandatory or otherwise

(2) Whenever there is reasonable cause for the state agency to believe that any person is engaged in, or is about to engage in, any acts which constitute a violation of ORS 442 320, 442 340 or any rule or order issued by the state agency, the state agency may institute an investigation into the matter The director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production or inspection of books, papers, correspondence, memoranda, agreement, accounts and other documents or records which the director considers relevant or material to the inquiry [1977 c 751 §33, 1981 c 693 §14, 1985 c 747 §36]

442.350 Federal aid; disposition of funds received. (1) The state agency may apply for and receive from the secretary, or from the Treasury of the United States as directed by the secretary, such sums as are available for the purposes of ORS 442 320, 442 340 and this section, implementing the federal law, and functions set forth in agreements between the state agency and the secretary

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

Expenditures for purposes of this section shall be confined solely to such funds as may be made available by the secretary [Formerly 441 140]

442 355 [1983 c 482 §12, 1985 c 747 §14, renumbered 442 120]

442.360 Certificate of Need Appeals Board; members, terms, officers, compensation and expenses. (1) The Certificate of Need Appeals Board is established The board shall serve as the appeals body on issues involving certificates of need as provided in ORS 442.320 and 442 340

(2) The board shall consist of five members of the Oregon Health Council knowledgeable about health care matters appointed as follows

(a) Three consumer members appointed by the chairperson of the Oregon Health Council with regard to geographic representation

(b) Two direct providers appointed by the chairperson of the Oregon Health Council with regard to geographic representation

(3) Members shall serve the term established by their council membership, and are eligible for reappointment Any vacancy shall be filled in the same manner as the original appointment as described in subsection (2) of this section

(4) Members are entitled to compensation and expenses as provided in ORS 292 495

(5) Members shall select a chairperson and vice chairperson with such functions as the board may determine The board shall meet on the call of the chairperson as necessary to hear appeals. [1977 c 751 §9, 1979 c 697 §7, 1981 c 693 §25, 1985 c 747 §37]

HEALTH CARE COST REVIEW

442.400 "Health care facility" defined.

As used in ORS 442.400 to 442.450, unless the context requires otherwise, "health care facility" or "facility" means such facility as defined by ORS 442 015, exclusive of a long term care facility, and includes all publicly and privately owned and operated health care facilities, but does not include facilities described in ORS 441 065 [Formerly 441 415, 1979 c 697 §8, 1981 c 693 §15]

442.405 Legislative findings and policy. The Legislative Assembly finds that rising costs and charges of health care facilities are a matter of vital concern to the people of this state. The Legislative Assembly finds and declares that it is the policy of this state

(1) That cost containment programs be established and implemented by health care facilities in such manner as to both enable and motivate such facilities to control rapidly increasing costs,

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

(3) To encourage development of programs of research and innovation in the methods of delivery of institutional health care services of high quality with costs and charges reasonably related to the nature and quality of the services rendered [Formerly 441 420]

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

(a) Prospective budgets for fiscal years of such facilities beginning on and after the operative date of this section, and

(b) A list of all rates required by rule of the state agency that are in effect as of January 1 each year

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

(3) For the purpose of public information, the state agency shall notify the appropriate health systems agency of the filing of changed or new rates by hospitals in the health service area

(4) Upon notice being given by the state agency, the state agency may order any rates which are put into effect in violation of subsection (2) of this section to revert to the previously filed rates until subsection (2) of this section has been complied with. Upon notice being given by the state agency, all amounts or some proportion of the amounts as determined by the state agency at its discretion that are obtained by a facility in violation of subsection (2) of this section may at the discretion of the state agency either

(a) Be refunded to those persons overcharged, or

(b) Offset against future charges in lieu of refunding

(5) Each facility shall make a copy of its current filed rates available, during ordinary business hours, for inspection by any person on demand [1977 c 751 §45, 1981 c 693 §16, 1983 c 482 §13, 1985 c 747 §38]

442.415 Effect of service reductions on rates; markup on supplies and services; penalties not allowable in determining rates. In connection with the filing of rates as required under ORS 442 410, 442 450 and this section

(1) A finding by the state agency that any health care facility has reduced the content of a service without a compensating reduction in rates shall be considered as if such reduction in content of such service were an increase in rates subject to ORS 442 325, 442 410, 442 450, section 47, chapter 751, Oregon Laws 1977, and this section

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

(3) Amounts incurred as civil penalties under any law of this state shall not be allowable as costs for purposes of rate determination, nor for reimbursement by a third party payor [1977 c 751 §46, 1983 c 482 §14]

442.420 Application for financial assistance; financial analysis and investigation authority; rules. (1) The state agency may apply for, receive and accept grants, gifts, payments and other funds and advances, appropriations, properties and services from the United States, the State of Oregon or any govern-

mental body, agency or agencies or from any other public or private corporation or person, and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects

(2) In cooperation with the appropriate health systems agency and the appropriate professional review organizations, the state agency shall conduct or cause to have conducted such analyses and studies relating to costs of health care facilities as it considers desirable, including but not limited to methods of reducing such costs, utilization review of services of health care facilities, peer review, quality control, financial status of any facility subject to ORS 442 400 to 442 450 and sources of public and private financing of financial requirements of such facilities

(3) The state agency may also

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

(b) Subpena witnesses, papers, records and documents the state agency considers material or relevant in connection with functions of the state agency subject to the provisions of ORS 183.310 to 183 550,

(c) Exercise, subject to the limitations and restrictions imposed by ORS 442 400 to 442 450, all other powers which are reasonably necessary or essential to carry out the express objectives and purposes of ORS 442 400 to 442 450, and

(d) Adopt rules in accordance with ORS 183 310 to 183 550 necessary in the state agency's judgment for carrying out the functions of the state agency [Formerly 441 435, 1981 c 693 §17, 1983 c 482 §15, 1985 c 747 §39]

442.425 Authority over accounting and reporting systems of facilities. (1) The state agency by rule may specify one or more uniform systems of accounting and financial reporting, necessary to meet the requirements of ORS 442 400 to 442 450. Such systems shall include such cost allocation methods as may be prescribed and such records and reports of revenues, expenses, other income and other outlays, assets and liabilities, and units of service as may be prescribed. Each facility under the state agency's jurisdiction shall adopt such systems for its fiscal period starting on or after the effective date of such system and shall make the required reports on such forms as may be required by the state agency. The state agency may extend the period by which compliance is required upon timely application and for good cause. Filings of such

records and reports shall be made at such times as may be reasonably required by the state agency.

(2) Existing systems of accounting and reporting used by health care facilities shall be given due consideration by the state agency in carrying out its duty of specifying the systems of accounting and uniform reporting required by ORS 442 400 to 442 450. The state agency insofar as reasonably possible shall adopt accounting and reporting systems and requirements which will not unreasonably increase the administrative costs of the facility.

(3) The state agency may allow and provide for modifications in the accounting and reporting system in order to correctly reflect differences in the scope or type of services and financial structure between the various categories, sizes or types of health care facilities and in a manner consistent with the purposes of ORS 442 400 to 442 450.

(4) The state agency may establish specific annual reporting provisions for facilities that receive a preponderance of their revenue from associated comprehensive group-practice prepayment health care service plans. Notwithstanding any other provisions of ORS 441 055 and 442 400 to 442 450, such facilities shall be authorized to utilize established accounting systems and to report costs and revenues in a manner which is consistent with the operating principles of such plans and with generally accepted accounting principles. When such facilities are operated as units of a coordinated group of health facilities under common ownership, they shall be authorized to report as a group rather than as individual institutions, and as a group shall submit a consolidated balance sheet, income and expense statement and statement of source and application of funds for such group of health facilities [Formerly 441 440, 1981 c 693 §18]

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

(2) In carrying out the duties prescribed by ORS 441 055 and 442.400 to 442.450, the state agency may utilize its own staff or may contract with any appropriate, independent, qualified third party. No such contractor shall release or publish or otherwise use any information made

available to it under its contractual responsibility unless such permission is specifically granted by the state agency [Formerly 441 445]

442.435 Investigation of facility financial status; cost review determinations; judicial review. (1) The state agency may conduct such investigations as to determine to the satisfaction of the state agency that

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

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

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

(d) Rates and charges meet the agency's rate increase guidelines and standards of performance

(2) In establishing by rule rate increase guidelines and standards of performance, the agency is encouraged to consult with national, regional or local experts on health care finance and economics

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

(4) When the state agency finds that rates charged by a facility are excessive because of underutilization of a service or unnecessary duplication of a service, it shall report its findings to the facility and to the Oregon Health Council.

(5) If the state agency determines that rates charged by a facility or to be charged by a facility exceed the agency's guidelines for reasonableness which may be adopted by rule as specified under ORS 442 440, and the rates are judged unreasonable, the state agency shall cause such facility to be given written notice of such determination and provide for publication of such determination in such manner and in such media as the state agency considers necessary to give the public notice of such determination

(6) A determination by the state agency that a rate or charge is unreasonable may be appealed as a contested case under ORS 183.480 [Formerly 441 460, 1983 c 482 §16]

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

In determining whether a rate charged by a health care facility is reasonable, the state agency shall take into consideration the total financial requirements of the facility as well as the financial impact upon its payors and may include.

(1) Prospective rate increase guidelines for annualized increases in hospital rates as adopted by agency rule

(2) Criteria for determining reasonableness of hospital rates and rate increases which may be adopted as necessary by agency rule in addition to the following

(a) Operating expenses resulting from efficiently rendered services necessary to provide adequate patient care

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

(c) Appropriately incurred interest charges on indebtedness for both capital and operating needs

(d) Reasonable unreimbursed costs of education, both primary and continuing

(e) Reasonable unreimbursed expenses for research related to patient care

(f) Reasonable depreciation expenses based on the expected useful life of the property and equipment involved, the acquisition of which was necessary to provide appropriate levels of health care

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

(h) Requirements for capital expenditures approved by the State Health Planning and Development Agency for replacement, modernization, renovation and expansion of services and facilities

(i) Requirements for necessary working capital including, but not limited to operating cash, patients' accounts receivable and inventories when an effective collections policy is in effect, inventories are not excessive, and the desired cash balance is in reasonable proportion to facility cash disbursement requirements

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

(3) The state agency shall consider that non-profit and governmental health care facilities may charge rates which will enable them to render effective and efficient services of high quality on a solvent basis

(4) The state agency shall consider that proprietary health care facilities may charge rates which will enable them to render effective and

efficient services including a fair return to their owners

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

(6) In the interest of promoting the most efficient and effective use of health care facilities, the state agency may consider alternative methods of rate determination and payment of an experimental nature that may be in the public interest and consistent with the purposes of ORS 441 055 and 442 400 to 442 450. [Formerly 441 465, 1983 c 482 §17, 1983 c 740 §161]

442 442 [1979 c 697 §10, repealed by 1981 c 693 §31]

442.445 Civil penalty for failure to perform. (1) Any health care facility that fails to perform as required in ORS 442 400 to 442 500 and 442 120 and rules of the state agency may be subject to a civil penalty

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

(3) Any penalty imposed under this section shall become due and payable when the facility incurring the penalty receives a notice in writing from the director of the state agency. The notice shall be sent by registered or certified mail and shall include a reference to the statute violated, a statement of the violation, a statement of the amount of the penalty imposed and a statement of the facility's right to request a hearing. The facility to whom the notice is addressed shall have 20 days from the date of mailing the notice to make written application for a hearing. All hearings shall be conducted as provided in ORS 183 310 to 183.550 for a contested case

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

(5) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the state agency considers proper and consistent with the public health and safety [Formerly 441 480, 1981 c 693 §19, 1983 c 482 §18, 1983 c 696 §21]

442.450 Exemption from cost review regulations. The following are not subject to ORS 442 400 to 442 450

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

(2) Health care facilities described in ORS 441 065 [1977 c 751 §55]

Note- Sections 41 and 42, chapter 747, Oregon Laws 1985, provide

Sec 41 Section 42 of this Act is added to and made a part of ORS chapter 442 and is repealed July 1, 1987

Sec. 42 (1)(a) The state agency shall establish the Oregon Hospital Performance Measurement System Utilizing the market basket index and plus points, as defined in ORS 442 015, the agency shall monitor the performance of hospitals' revenue per adjusted admission and utilization to determine the effectiveness of competition among hospitals

(b) Such performance measurement shall take into consideration differences among hospitals including, but not limited to, educational costs, unreimbursed care, case mix differences, inherent inefficiencies because of size and location of hospitals and other external forces over which hospitals have no control

(c) The agency shall compare, to the extent possible, performance of Oregon hospitals and hospitals in other states, including but not limited to, length of stay, admission rate per 1,000, patient days per 1,000, revenue per capita and revenue per admission

(2) The agency shall report its findings to the Sixty-fourth Legislative Assembly with its recommendation as to the feasibility, desirability and necessity of a price regulation system for Oregon hospitals. If such regulatory system is considered to be feasible, desirable and necessary, the basic format of such a system shall be included in the report and pre-session filed as proposed legislation

(3) The agency shall solicit and give serious consideration to the advice of affected providers in carrying out the duties set forth in subsections (1) and (2) of this section

442.460 Information about physician charges on certain diagnosis-related groups. In order to obtain regional or state-wide data about physician charges for nonhospital-based services, the state agency shall request information about physician charges for the 25 major diagnosis-related groups identified by the state agency from physicians, insurers or other third-party payers. Compliance with the request is voluntary on the part of such physicians, insurers and payers [1985 c 747 §15]

442.463 Annual utilization report; effect of failure to file report. (1) By December 31 of each year, each licensed health facility shall file with the state agency an annual report containing such information related to the facility's utilization as may be required by the state agency, in such form as the state agency prescribes by rule

(2) The Department of Human Resources shall withhold medical assistance payments not to exceed 10 percent of such payments from any licensed health facility upon notice from the state agency that the facility has failed to submit an annual report until the report is filed or if the report is filed after it is disapproved

(3) The annual report shall contain such information as may be required by rule of the state agency and must be approved by the state agency [1985 c 747 §§18, 19]

442.465 Capital expenditure report.

(1) Not later than December 31 of each year, each hospital as defined in ORS 442 015 shall submit to the state agency in such form as established by rule preliminary applications for new capital expenditures on hospital facilities and major medical equipment anticipated during the next year

(2) For the year commencing January 1, 1986, and for each year thereafter, the state agency shall establish by rule as a hospital capital expenditure target for projects requiring a certificate of need an amount not exceeding

(a) Four percent of total hospital operating expenses of all Oregon hospitals combined in the preceding calendar year, or

(b) The average annual amount the state agency determines all Oregon hospitals combined spent for hospital facilities and major medical equipment in the years 1980 to 1984. The state agency annually shall adjust this amount based upon the change in the Consumer Price Index for all Urban Consumers of the Portland, Oregon, Standard Metropolitan Statistical Area, as prepared by the Bureau of Labor Statistics of the United States Department of Labor, or its successor, during the preceding 12-month period. [1985 c 747 §22]

442.467 Monitoring expenditure targets. The state agency shall monitor the expenditure target imposed by ORS 442 465 by conducting necessary physical plant surveys and examination of facility plans in carrying out its duties under ORS 442 320 to 442 360 [1985 c 747 §23]

442.469 Categories for capital expenditures. In monitoring proposed capital expenditures,

the state agency shall categorize preliminary applications for capital expenditures based on the following factors

(1) Applications for projects will be divided into two groups

(a) Projects for upgrading or changing services or capacity for acute care services, or

(b) Projects for modernizing or replacing the physical plant or equipment

(2) For each application included in paragraph (a) of subsection (1) of this section, the state agency shall determine which of the following categories applies to the application

(a) Category A, which includes projects to reduce excess acute care capacity according to institution-specific recommendations of a health systems agency or projects to develop alternative programs in place of inpatient acute care services

(b) Category B, which includes projects to increase acute care capacity in a service area in an amount not exceeding 95 percent of the minimum bed need established by the state agency

(c) Category C, which includes projects to increase capacity in a service area between 95 percent and 100 percent of the minimum bed need established by the state agency or to upgrade equipment which has exceeded its useful life and whose replacement is consistent with the requirements for obtaining a certificate of need under this chapter

(d) Category D, which includes projects to increase acute care capacity, services or equipment by single providers which could be provided more efficiently through multi-facility projects or to upgrade equipment within its useful life and whose replacement is consistent with the requirements for obtaining a certificate of need under this chapter

(e) Category E, which includes all other projects to increase acute care services or capacity

(3) For each application included in paragraph (b) of subsection (1) of this section, the state agency shall determine which of the following categories apply to the application

(a) Category A, which includes projects to address an imminent threat to life, safety or continuity of service.

(b) Category B, which includes projects to address life safety requirements which are not waivable for the applicant, projects to address direct patient care of infection control requirements which are not waivable for the applicant or projects to address energy conservation or management systems, including computer or tele-

phone systems, for which the capital cost is not greater than the projected operational cost savings expected from such systems within a five-year period

(c) Category C, which includes projects to address basic needs for direct patient care and infection control, projects to address structural or mechanical requirements which are not waivable for the applicant, projects to address indirect patient care basic treatment and diagnostic needs not required by any applicable health and safety code, projects to address preventative maintenance based on expected useful life of the facility or equipment, projects to address indirect patient care basic needs other than treatment and diagnostic services not required by any applicable health and safety code or projects to address life safety items not required by any applicable health and safety code

(d) Category D, which includes projects to address direct patient care and infection control improvements, projects to address staff and administrative amenities or projects to address the marketability of a facility or its appearance

(e) Category E, which includes all modernization or replacement projects not otherwise included in this subsection [1985 c 747 §24]

RURAL HEALTH

442.470 Definitions for ORS 442.470 to 442.500. As used in ORS 442 470 to 442 500:

(1) "Agency" means the State Health Planning and Development Agency

(2) "Council" means the Rural Health Coordinating Council

(3) "Office" means the Office of Rural Health

(4) "Primary care physician" means a doctor of family practice, general practice, internal medicine, pediatrics and obstetrics and gynecology

(5) "Rural area" means any area designated as a rural area by the State Health Planning and Development Agency [1979 c 513 §1]

442.475 Office of Rural Health created.

There is created the Office of Rural Health in the State Health Planning and Development Agency [1979 c 513 §2]

442.480 Rural Health Care Revolving Account. (1) There is established the Rural Health Care Revolving Account in the State Health Planning and Development Agency Account of the General Fund

(2) All moneys appropriated for the purposes of ORS 442 470 to 442 500 and all moneys paid to the State Health Planning and Development

Agency by reason of loans, gifts or grants for the purposes of ORS 442 470 to 442 500, shall be credited to the Rural Health Care Revolving Account

(3) All moneys contained in the Rural Health Care Revolving Account shall be used for the purposes of ORS 442 470 to 442 500 [1979 c 513 §3]

442.485 Responsibilities of Office of Rural Health. The responsibilities of the Office of Rural Health shall include but not be limited to

(1) Coordinating state-wide efforts for providing health care in rural areas

(2) Accepting and processing applications from communities interested in developing health care delivery systems Application forms shall be developed by the State Health Planning and Development Agency

(3) Through the agency, applying for grants and accepting gifts and grants from other governmental or private sources for the research and development of rural health care programs and facilities

(4) Serving as a clearinghouse for information on health care delivery systems in rural areas

(5) Helping local boards of health care delivery systems develop ongoing funding sources

(6) Developing enabling legislation to facilitate further development of rural health care delivery systems and to expand the duties of the office, if necessary [1979 c 513 §4, 1983 c 482 §19]

442.490 Rural Health Coordinating Council; membership; terms; officers; compensation and expenses. (1) In carrying out its responsibilities, the Office of Rural Health shall be advised by the Rural Health Coordinating Council All members of the Rural Health Coordinating Council shall have knowledge, expertise or experience in rural areas and health care delivery The membership of the Rural Health Coordinating Council shall consist of

(a) One primary care physician who is appointed by the Oregon Medical Association and one primary care physician appointed by the Oregon Osteopathic Association,

(b) One nurse practitioner who is appointed by the Oregon Nursing Association,

(c) One pharmacist who is appointed by the State Board of Pharmacy,

(d) Two consumers who are appointed by the Governor,

(e) One representative appointed by the Conference of Local Health Officials,

(f) One consumer representative from the Western Oregon Health Systems Agency, appointed by the Western Oregon Health Systems Agency,

(g) One consumer representative from the Eastern Oregon Health Systems Agency, appointed by the Eastern Oregon Health Systems Agency,

(h) One consumer representative from the Northwest Oregon Health Systems, appointed by the Northwest Oregon Health Systems,

(i) One representative from the Oregon Health Sciences University, appointed by the President of the Oregon Health Sciences University,

(j) One representative from the Oregon Association of Hospitals, appointed by the Oregon Association of Hospitals,

(k) One dentist appointed by the Oregon Dental Association,

(L) One optometrist appointed by the Oregon Association of Optometry,

(m) One physician assistant who is appointed by the Oregon Society of Physician Assistants, and

(n) One naturopathic physician appointed by the Oregon Association of Naturopathic Physicians

(2) The Rural Health Coordinating Council shall elect a chairperson and vice-chairperson

(3) A member of the council is entitled to compensation and expenses as provided in ORS 292 495

(4) The chairperson may appoint nonvoting, advisory members of the Rural Health Coordinating Council. However, advisory members without voting rights are not entitled to compensation or reimbursement as provided in ORS 292 495

(5) Members shall serve for two-year terms

(6) The Rural Health Coordinating Council shall report its findings to the Office of Rural Health [1979 c 513 §5, 1981 c 693 §20, 1983 c 482 §19a]

442.495 Responsibilities of council.

The responsibilities of the Rural Health Coordinating Council shall be to:

(1) Advise the Office of Rural Health on matters related to the health care services and needs of rural communities;

(2) Develop general recommendations to meet the identified needs of rural communities, and

(3) To view applications and recommend to the office which communities should receive assistance, how much money should be granted or loaned and the ability of the community to repay a loan. [1979 c 513 §6, 1981 c 693 §21, 1983 c 482 §20]

442.500 Technical and financial assistance to rural communities. (1) The office shall provide technical assistance to rural communities interested in developing health care delivery systems.

(2) Communities shall make application for this technical assistance on forms developed by the office for this purpose.

(3) The office shall make the final decision concerning which communities receive the money and whether a loan is made or a grant is given

(4) The office may make grants or loans to rural communities for the purpose of establishing or maintaining medical care services

(5) The office shall provide technical assistance and coordination of rural health activities through staff services which include monitoring, evaluation, community needs analysis, information gathering and disseminating, guidance, linkages and research [1979 c 513 §8, 1981 c 693 §22, 1983 c 482 §21]

442 990 [Amended by 1955 c 533 §9, repealed by 1977 c 717 §23]