

Chapter 443

1987 REPLACEMENT PART

Home Health Agencies; Residential Facilities; Hospice Programs

HOME HEALTH AGENCIES	
443 005	Definitions for ORS 443 005 to 443 095
443 015	License required, renewal, transferability of license
443 025	Hospitals exempt from licensing requirements if standards are met
443 035	License fees, renewal date, disposition of funds
443 045	Denial, suspension and revocation of licenses
443 055	Governing body of home health agencies
443 065	General requirements for home health agencies
443 075	Physician required to plan and review certain treatment
443 085	Rules
443 095	Applicability of laws to domestic service
DOMICILIARY CARE FACILITIES	
443 205	Definitions for ORS 443 215 and 443 225
443 215	Policy
443 225	Location and capacity of domiciliary care facilities
RESIDENTIAL FACILITIES	
443 400	Definitions for ORS 443 400 to 443.455
443 405	Exclusions from definition of "residential facility"
443 410	License required
443 415	License applications, fee, investigations, grounds for issuance and denial of license
443 420	Qualifications for license
443 425	License term, contents, renewal, fee
443 430	Transferability of license, disposition of license fees
443.435	Inspection of facilities
443 437	Choice of prescriptive and nonprescriptive drugs and supplies
443 440	Revocation and suspension of licenses, procedure
443 445	Persons admissible at facilities, transfer of persons requiring certain treatment, operation of facilities by persons relying on spiritual means for healing
443 450	Rules
443 452	Waiver procedure
443.455	Civil penalties
443 460	Exemptions
SITING OF RESIDENTIAL FACILITIES (Elderly)	
443 510	Definitions for ORS 443 510 to 443 550
443 520	Policy
443 530	Procedures for siting residential facilities
443 540	Siting application
443 550	Denial prohibited unless procedure adopted (Handicapped)
443 580	Definitions for ORS 443 580 to 443 600
443 590	Policy
443 600	Residential home as residential use, powers of city and county over zoning (Mentally Handicapped)
443 610	Policy
443 620	Residential care facilities allowed as conditional use
443 630	City and county compliance with ORS 443 620
443 640	Exemptions
ADULT FOSTER HOMES	
443 705	Definitions for ORS 443 705 to 443 825
443 715	Exclusions from definition of "adult foster home"
443 725	License required, resident manager required
443 735	Issuance of license, renewal
443 745	Denial, suspension or revocation, conditional license, review
443 755	Entry and inspection of homes, access to residents, fire inspection
443 765	Complaint procedure, retaliation prohibited, notice of rates and rules; liability for complaints
443 775	Rulemaking, compliance, enforcement, civil penalties
443 780	Exemption where county has licensing and inspection program
443 790	Authority of director to impose civil penalty, factors to be considered
443.795	Notice of penalty, application for hearing
443 805	Order assessing penalty, judgment, lien, execution
443 815	Judicial review of penalties
443 825	Disposition of penalties recovered
HOSPICE PROGRAMS	
443 850	Definitions for ORS 443 850 to 443 870
443 860	Certification or accreditation required, exception
443 870	Hospice program registry

PUBLIC HEALTH AND SAFETY

PENALTIES

443 991 Penalties

CROSS REFERENCES

443 410

Access to facilities by persons providing services, 441 700

Complaint procedure, 441 690, 441 695

443 440 to 443 455

Licensing required for independent residence facilities
418 475

Licensing required for residential facilities of private child-
caring agency, 418 215

443 580 to 443 600

Exclusive farm use zone permitted uses, 215 213

HOME HEALTH AGENCIES

443.005 Definitions for ORS 443.005 to 443.095. As used in ORS 443 005 to 443 095

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

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

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

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

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

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

443 010 [Amended by 1963 c 164 §1, repealed by 1969 c 641 §19]

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

443 020 [Amended by 1957 c 697 §4, 1961 c 316 §10, 1967 c 89 §6 repealed by 1969 c 641 §19]

443.025 Hospitals exempt from licensing requirements if standards are met. Any hospital licensed under ORS 441 015 may provide home health services without obtaining a license under ORS 443 035 so long as the services provided meet the requirements of ORS 443 005 to 443 095 [1977 c 738 §7]

443 030 [Repealed by 1969 c 641 §19]

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

(2) All fees received pursuant to subsection (1) of this section shall be paid over to the State Treasurer and credited to the Health Division Account Such moneys are appropriated continuously to the Health Division for the administration of ORS 443 005 to 443 095 [1977 c 738 §8]

443 040 [Repealed by 1969 c 641 §19]

443.045 Denial, suspension and revocation of licenses. (1) The division may deny, suspend or revoke the license of any home health agency for failure to comply with ORS 443 005 to 443 095 or with the rules of the division as authorized by ORS 443 085

(2) License denials, suspensions and revocations, adoption of rules and judicial review thereof shall be in accordance with ORS 183 310 to 183 550 [1977 c 738 §9]

443 050 [Repealed by 1969 c 641 §19]

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

443 060 [Amended by 1963 c 164 §2, repealed by 1969 c 641 §19]

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

(1) Be primarily engaged in providing skilled nursing services and at least one other service delineated in ORS 443 075 (2) and (3),

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

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

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

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

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

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

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

(3) Home health aide services, and

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

443.085 Rules. The division shall adopt rules relating to the home health agencies licensed under ORS 443 005 to 443 095 and 443 991 (1), governing

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

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

(3) Procedures for maintaining records, and

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

443.095 Applicability of laws to domestic service. No provision of ORS 443 005 to 443.095 and 443 991 (1) shall be construed to prevent repair or domestic services by any person [1977 c 738 §10]

DOMICILIARY CARE FACILITIES

443.205 Definitions for ORS 443.215 and 443.225. As used in ORS 443 215 and 443 225, "domiciliary care facilities" means facilities providing residential care to adults, including adult foster care homes, group care facilities or residential treatment, training or care facilities, established, contracted for or operated by any division of the Department of Human Resources [1977 c 779 §3, formerly 184 870, 1987 c 320 §234]

443 210 [1953 c 659 §1, 1965 c 230 §1, 1973 c 285 §8, repealed by 1977 c 717 §23]

443.215 Policy. (1) The Legislative Assembly recognizes the importance of providing

a high quality of domiciliary care facilities throughout the State of Oregon

(2) It is the intent of ORS 443 205 to 443 225 to distribute domiciliary care facility capacity on the basis of population and the regional origin of institutionalized persons [1977 c 779 §1, formerly 184 875]

443 220 [1953 c 659 §2, 1971 c 650 §21, 1973 c 285 §9, repealed by 1977 c 717 §23]

443.225 Location and capacity of domiciliary care facilities. (1) Except as otherwise provided by subsections (3) and (4) of this section, the capacity of all domiciliary care facilities must be located throughout the state based on the relationship of (a) the population of the county in which the additional capacity is proposed to be located to (b) the number of persons originating from the county determined to be in need of domiciliary care by the Department of Human Resources. However, nothing in this subsection is intended to prevent the placement of a person who is or was not a resident of the county in a domiciliary care facility in the county

(2) Where a county is too sparsely populated to produce a meaningful ratio of county population to population in need, or a county is lacking necessary support services, the population of two or more counties may be combined. The area of the combined counties may be considered a county for purposes of subsection (1) of this section

(3) The computation required by subsection (1) of this section shall not require reduction in any domiciliary care facility capacity existing on October 4, 1977

(4) Subject to the appropriate licensing requirements, the governing body of a county may authorize a domiciliary care facility located in the county to exceed the capacity limit imposed by subsection (1) of this section upon

(a) Request of an individual or organization operating or proposing to operate a domiciliary care facility,

(b) Consultation with an advisory committee appointed by the governing body and consisting of persons who are particularly interested in the type of domiciliary care facility contemplated, and

(c) Finding of good cause following notice and public hearing [1977 c 779 §2, 1979 c 235 §1, formerly 184 880]

443 230 [1953 c 659 §3, 1973 c 285 §10, repealed by 1977 c 717 §23]

443 240 [1953 c 659 §§4, 5, 1973 c 285 §11, repealed by 1977 c 717 §23]

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

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

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

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

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

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

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

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

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

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

RESIDENTIAL FACILITIES

443.400 Definitions for ORS 443.400 to 443.455. As used in ORS 443 400 to 443 455 and 443 991 (2), unless the context requires otherwise

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

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

(3) "Resident" means any individual residing in a facility who receives residential care, treatment or training For purposes of ORS 443 400 to 443 455 and 443 991 (2), an individual is not considered to be a resident if he or she is related by blood or marriage within the fourth degree as determined by civil law to the person licensed to operate or maintain the facility

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

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

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

(7) "Residential training facility" means a facility that provides, for six or more mentally retarded or other developmentally disabled indi-

viduals, residential care and training in one or more buildings on contiguous properties

(8) "Residential training home" means a facility that provides, for five or fewer mentally retarded or other developmentally disabled individuals, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the Mental Health Division

(9) "Residential treatment facility" means a facility that provides, for six or more mentally, emotionally or behaviorally disturbed individuals, residential care and treatment in one or more buildings on contiguous properties

(10) "Residential treatment home" means a facility that provides for five or fewer mentally, emotionally or behaviorally disturbed individuals, residential care and treatment in one or more buildings on contiguous properties

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

(12) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional or physical symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance or physical handicap [1977 c 717 §1, 1987 c 548 §1]

443.405 Exclusions from definition of "residential facility." For purposes of ORS 443.400 to 443 455 and 443 991 (2), "residential facility" does not include

(1) A residential school,

(2) State or local correctional facilities, other than local facilities for persons enrolled in work release programs maintained under ORS 144 460, juvenile training schools as defined in ORS 420 005, youth care centers operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885, and juvenile detention facilities as defined in ORS 419 602,

(3) A nursing home,

(4) A hospital,

(5) A place primarily engaged in recreational activities,

(6) A foster home,
 (7) A place providing care and treatment on less than a 24-hour basis, or

(8) A child-caring agency or residential school or other organization certified or licensed by the Children's Services Division under ORS 418 205 to 418 327 [1977 c 717 §2, 1983 c 510 §18]

443 410 License required. A license issued by the department is required in order to operate or maintain any residential facility having six or more mentally retarded, developmentally disabled, mentally, emotionally or behaviorally disturbed, physically handicapped or socially dependent residents, or any combination of such residents totaling six or more. In the case of a combination of residents, the category of licensure shall be determined by the director [1977 c 717 §3, 1983 c 510 §19]

443.415 License applications; fee; investigations; grounds for issuance and denial of license. (1) Applications for licensure to maintain and operate a residential facility shall be made to the department on forms provided for that purpose by the department. Each application shall be accompanied by a fee of \$60 for facilities defined in ORS 443 400 (5), (7) and (9) and a fee of \$30 for homes defined in ORS 443 400 (8) and (10). No fee is required of any governmentally operated residential facility.

(2) Upon receipt of an application and fee, the department shall cause an investigation to be made by the appropriate divisions, as determined by the director. The department shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443 400 to 443 455 and 443 991 (2) and the rules of the director. Licensure may be denied when a residential facility is not in compliance with ORS 443 400 to 443 455 and 443 991 (2) or the rules of the director. Licensure shall be denied if the State Fire Marshal or other authority has given notice of noncompliance of facilities defined in ORS 443 400 (5), (7) and (9) pursuant to ORS 479 220 [1977 c 717 §8, 1979 c 696 §16, 1987 c 548 §2]

443.420 Qualifications for license. (1) A person applying for a license under ORS 443 415 must, in the judgment of the director, be a person:

(a) Who demonstrates an understanding and acceptance of the rules governing residential facilities,

(b) Mentally and physically capable of caring for such residents, and

(c) Who employs or utilizes only individuals whose presence does not jeopardize the health, safety or welfare of residents

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

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

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

(5) Prior to licensure, a residential facility that proposes to house persons under the age of 21 years shall submit written proof of compliance with ORS 339 175 to the department [1977 c 717 §4, 1985 c 264 §3]

443.425 License term; contents; renewal; fee. (1) Licensure under ORS 443 415 is effective for two years from the date of issue unless sooner revoked. Each license shall state the name of the person operating the residential facility, the name of the person who owns the facility, the address of the premises to which the license applies and the maximum number of residents to be maintained in such residential facility at any time whether the residential facility is licensed as a residential training facility, a residential treatment facility, a residential care facility, a residential training home or residential treatment home and such other information as the department considers necessary.

(2) A license is renewable upon submission of an application to the department and payment of a fee of \$60 for facilities licensed under ORS 443 400 (5), (7) and (9) and a fee of \$30 for homes licensed under ORS 443.400 (8) and (10). No fee shall be required of a governmentally operated residential facility. Filing of an application for renewal before the date of expiration of a license extends the effective date of expiration of the license until the department has acted upon such application. The department shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules, or if the State Fire Marshal or the authorized representative thereof has given notice of non-compliance of facilities under ORS 443 400 (5), (7) and (9) pursuant to ORS 479 220 [1977 c 717 §9, 1983 c 47 §1, 1983 c 740 §162, 1987 c 548 §3]

443.430 Transferability of license; disposition of license fees. (1) No license under ORS 443 415 is transferable or applicable to any location, residential facility or management other than that indicated on the application for licensure.

(2) All moneys collected under ORS 443 400 to 443 455 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Resources in the administration of ORS 443 400 to 443 455 [1977 c 717 §10, 1983 c 47 §2]

443.435 Inspection of facilities. The director or authorized representative shall periodically visit and inspect every residential facility to determine whether it is maintained and operated in accordance with ORS 443 400 to 443 455 and 443 991 (2) and the rules of the director, and to consult with and advise management concerning methods of care, treatment, training, records, housing and equipment. Employees of the department and the State Fire Marshal or authorized representative on request shall be permitted access to the premises and records of individuals in a residential facility pertinent to fire safety [1977 c 717 §11]

443.437 Choice of prescriptive and nonprescriptive drugs and supplies. (1) A resident in a residential facility must have a choice

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

(A) Provides for timely delivery of drugs,

(B) Provides adequate protection to prevent tampering with drugs,

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy, and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy,

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

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

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

(2) If the established system of the facility, whether that system is provided by a facility pharmacy or a pharmacy under contract, provides patient profile information, the pharmacy

chosen by the resident under paragraph (a) of subsection (1) of this section must also provide that information for any resident it serves at the facility [1983 c 328 §4]

443.440 Revocation and suspension of licenses; procedure. The department may revoke or suspend the license of any residential facility which is not operated in accordance with ORS 443 400 to 443 455 and 443 991 (2) or the rules adopted thereunder. Such revocation or suspension shall be taken in accordance with rules of the department and ORS 183 310 to 183 550. However, in cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension [1977 c 717 §12]

443.445 Persons admissible at facilities; transfer of persons requiring certain treatment; operation of facilities by persons relying on spiritual means for healing.

(1) No residential facility shall admit individuals who require continuous nursing care

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

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

(4) In the case of residential facilities supervised by and operated exclusively for persons who rely upon prayer or spiritual means for healing in accordance with the creed or tenets of a well-recognized church or religious denomination, no medical, psychological or rehabilitative procedures shall be required [1977 c 717 §5]

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

(a) The physical properties of the residential facility,

(b) Storage, preparation and serving of food,

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

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

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

(2) Distinct rules shall be adopted for residential training facilities, residential treatment

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

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

443.452 Waiver procedure. (1) The director shall waive the requirements of ORS 443 410 for a residential care facility caring for physically handicapped residents if

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

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

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

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

Note 443 452 (1) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 443 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

443.455 Civil penalties For purposes of imposing civil penalties, residential facilities approved under ORS 443 400 to 443 455 and 443 991 (2) are considered to be long-term care facilities, subject to ORS 441 705 to 441 745. However, the director and the department shall exercise the powers conferred on the Assistant Director for Health and such division under ORS 441 705 to 441 745, and shall by rule prescribe a schedule of penalties appropriate to residential facilities licensed under ORS 443 400 to 443 455 and 443 991 (2) [1977 c 717 §13]

443.460 Exemptions. (1) The director may exempt from the license, inspection and fee provisions of ORS 443 400 to 443 455 residential care facilities in those counties where there is a county agency which provides similar programs for licensing and inspection that the director finds are equal to or superior to the requirements of ORS 443 400 to 443 455

(2) Pursuant to an exemption as provided in subsection (1) of this section, the director may provide funds and other resources to the county necessary to enable the county to perform the licensing and inspection functions [1987 c 548 §4]

443 475 [1977 c 284 §2 repealed by 1983 c 47 §3]

SITING OF RESIDENTIAL FACILITIES (Elderly)

443.510 Definitions for ORS 443.510 to 443.550. As used in ORS 443 510 to 443 550, unless the context requires otherwise.

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

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

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

(4) "Residential facility" means a facility licensed under ORS 443 400 to 443 455 for 11 or fewer unrelated physically or mentally handicapped persons or elderly persons and not to exceed two staff persons who need not be related to each other or to any other facility resident [1981 c 427 §1]

443.520 Policy. The Legislative Assembly finds and declares that

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

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

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

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

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

(2) If a city or county denies an application for the siting of a residential facility, it must

make formal findings of the reasons for the denial pursuant to the procedure adopted under subsection (1) of this section

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

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

(a) Circumstances have changed,

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

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

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

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

443.550 Denial prohibited unless procedure adopted. After July 1, 1982, no city or county may deny an application for the siting of a residential facility unless it has adopted the procedure authorized by ORS 443 530 [1981 c 427 §5]

(Handicapped)

443.580 Definitions for ORS 443.580 to 443.600. As used in ORS 443 580 to 443 600 unless the context requires otherwise

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

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

(3) "Residential home" means a residence for five or fewer unrelated physically or mentally handicapped persons and for staff persons who need not be related to each other or to any other home resident [1983 c 293 §1]

443.590 Policy. The Legislative Assembly finds and declares that

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

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

(3) It is difficult to site and establish residential homes in the communities of this state, and

(4) Restrictions on the siting of such residences have become a state-wide problem [1983 c 293 §2]

443.600 Residential home as residential use; powers of city and county over zoning. (1) A residential home shall be considered a residential use of property for zoning purposes. Residential homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. No city or county shall enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a residential home

(2) A city or county may impose zoning conditions on the establishment and maintenance of a residential home in an area zoned for residential or commercial use, provided that such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone

(3) A county may

(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215 203,

(b) Impose reasonable conditions on the establishment of a residential home in an area zoned for farm use, and

(c) Allow a division of land for a residential home in an exclusive farm use zone only as provided in ORS 215 263 (8) [1983 c 293 §3, 1985 c 544 §1]

(Mentally Handicapped)

443.610 Policy. The Legislative Assembly finds

(1) That mentally handicapped persons are entitled to live as normally as possible within communities and not be excluded because their disability requires a group living environment,

(2) That there is a growing need for such residences to provide quality care and protection for these persons and to prevent inappropriate placement in state institutions or nursing homes,

(3) That it is difficult to site such residences in communities in the state, and

(4) That the problem is state wide [1987 c 351 §1]

443.620 Residential care facilities allowed as conditional use. In zones permitting densities of eight or more dwellings per acre, residential care facilities, as defined under ORS 443 400, shall be allowed as a conditional use [1987 c 351 §2]

443.630 City and county compliance with ORS 443.620. (1) Cities and counties shall amend ordinances to comply with ORS 443 620 as part of periodic land use plan review occurring after January 1, 1988. Nothing in this section prohibits a city or county from amending its ordinances prior to periodic review

(2) After periodic land use plan review occurring after January 1, 1988, no city or county shall enact or enforce zoning ordinances or siting criteria which would preclude siting of residential care facilities in zones permitting densities of eight or more dwellings per acre [1987 c 351 §3]

443.640 Exemptions. Cities with populations of fewer than 2,500 are exempted from the provisions of ORS 443 610 to 443 640 [1987 c 351 §4]

ADULT FOSTER HOMES

443.705 Definitions for ORS 443.705 to 443.825. As used in ORS 443 705 to 443 825

(1) "Adult foster home" means any family home or facility in which residential care is provided for five or fewer adults who are not related to the provider by blood or marriage

(2) "Department" means, as appropriate, the Senior Services Division or the Mental Health Division of the Department of Human Resources

(3) "Director" means the Director of the Department of Human Resources

(4) "Licensed adult foster home" means a home which has been investigated and approved by the department. This includes an onsite inspection of the facility

(5) "Provider" means any person operating an adult foster home

(6) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation [1983 c 629 §1, 1985 c 663 §1 1987 c 430 §1]

443.715 Exclusions from definition of "adult foster home." For purposes of ORS 443 705 to 443 825, "adult foster home" does not include

(1) Any house, institution, hotel, or other similar place that supplies board and room only, or room only, or board only, if no resident thereof requires any element of care

(2) Any specialized living situation for physically handicapped persons where the Senior Services Division provides payment for personal care services other than to an adult foster home provider

(3) Any small residential care facility for mentally retarded and developmentally disabled persons certified and funded by the Mental Health Division [1983 c 629 §2 1985 c 663 §2]

443.725 License required; resident manager required. (1) Every provider of adult foster care shall be licensed with the department before caring for adult residents

(2) A provider must live in the home that is to be licensed or hire a certified resident manager [1983 c 629 §3, 1985 c 663 §3]

443.735 Issuance of license; renewal. (1) Applications for license to maintain and operate an adult foster home shall be made on forms provided by the department. Each application shall be accompanied by a fee of \$20 per bed requested for license

(2) Upon receipt of an application and fee, the department shall cause an investigation to be made by the appropriate divisions, as determined by the director. The department shall issue a license to any applicant for operation of an adult foster home in compliance with ORS 443 705 to 443 825 and 443 991 (3) or (4) or rules of the director. A license may be denied when an adult foster home is not in compliance with ORS 443 705 to 443 825 and 443 991 (3) or (4) or rules of the director

(3) A license under ORS 443 725 is effective for one year from the date of issue unless sooner revoked. Each license shall state the name of the resident manager of the adult foster home, the name of the person who owns the adult foster home, the address of the premises to which the license applies and the maximum number of

residents. If during the period covered by the license a resident manager changes, the provider must within 15 days request modification of the license. The request must be accompanied by a fee of \$10.

(4) No license under ORS 443.725 is transferable or applicable to any location, persons operating the adult foster home or the person owning the adult foster home other than that indicated on the application for licensing.

(5) All adult foster homes now certified will be considered to be licensed until such time as the current certification expires.

(6) All moneys collected under ORS 443.725 to 443.780 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Resources [1983 c 629 §4, 1985 c 663 §4].

443.745 Denial, suspension or revocation; conditional license; review. (1) A license may be denied, suspended, revoked or have conditions attached upon a finding by the department of any of the following:

(a) There exists a threat to the health, safety or welfare of any resident.

(b) There is reliable evidence of abuse, neglect or exploitation of any resident.

(c) The facility is not operated in compliance with ORS 443.705 to 443.825 and 443.991 (3) or (4) or the rules adopted thereunder.

(d) Such other circumstances as may be established by the department by rule.

(2) Conditions attached to a license shall be effective upon order of the director.

(3) Suspension or revocation of a license authorized by this section for any reason other than abuse, neglect or exploitation of the resident shall be preceded by a hearing under ORS 183.310 to 183.550 if requested by the provider.

(4) If the license is suspended or revoked for the reason of abuse, neglect or exploitation of a resident, the provider may request a review in writing within 10 days after notice of the suspension or revocation. If a request is made, the director shall review all material relating to the allegation of abuse, neglect or exploitation and to the suspension or revocation within 10 days of the request. The director shall determine, based on review of the material, whether or not to sustain the decision to suspend or revoke. If the director determines not to sustain the decision, the license shall be restored immediately. The decision of the director is subject to judicial

review as a contested case under ORS 183.310 to 183.550.

(5) In the event the license to maintain an adult foster home is ordered suspended or revoked, the department may withhold service payments until the defective situation is corrected. For protection of residents, the department may arrange for them to move [1983 c 629 §5, 1985 c 663 §5, 1987 c 431 §1].

443.755 Entry and inspection of homes; access to residents; fire inspection.

(1) The department staff shall be permitted access to enter and inspect all licensed adult foster homes. The department shall be permitted access to enter and inspect any unlicensed adult foster home upon the receipt of an oral or written complaint, or in case the department itself has cause to believe that an adult foster home is operating without a license or there exists a threat to the health, safety or welfare of any resident. The department staff shall be permitted access to the residents of adult foster homes in order to interview residents privately and to inspect residents' records.

(2) The state or local fire inspectors shall be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the department [1983 c 629 §6, 1985 c 663 §6].

443.765 Complaint procedure; retaliation prohibited; notice of rates and rules; liability for complaints. (1) Complaints against adult foster homes may be filed with the department by any person, whether or not a resident of the home. The department shall investigate complaints regarding adult foster homes.

(2) The department shall prepare a notice which must be posted in a conspicuous place in each adult foster home stating the telephone number of the department and the procedure for making complaints.

(3) The department shall maintain a file of all complaints and the action taken on the complaint, indexed by the name of the owner or operator. The filed complaint forms shall protect the privacy of the complainant, the resident and the witnesses.

(4) Any person has a right to inspect and photocopy the complaint files maintained by the department.

(5)(a) No owner or operator of an adult foster home shall retaliate against a resident by increasing charges, decreasing services, rights or privileges, or threatening to increase charges or decrease services, rights or privileges, by taking or

threatening to take any action to coerce or compel the resident to leave the facility, or by abusing or threatening to harass or to abuse a resident in any manner after the resident has filed a complaint with the department

(b) Anyone who makes a report under ORS 443 705 to 443 825, and any witness or employe of a facility interviewed about the complaint shall not be subject to any retaliation by any owner or operator of an adult foster home for making a report or being a witness, including but not limited to restriction of otherwise lawful access to the home or to any resident thereof, or, if an employe, to dismissal or harassment

(6) The provider shall give all residents, upon admission, a notice of the monthly rates and the house rules

(7) Anyone participating in good faith in the making of a complaint pursuant to this section who has reasonable grounds for the making thereof shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of such complaint. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such complaint [1983 c 629 §7, 1985 c 651 §3]

443.775 Rulemaking; compliance; enforcement; civil penalties. (1) The department shall adopt rules governing adult foster homes and the level of care provided in such homes, including the provision of care to more than one person with nursing care needs under specified conditions and department approval, such as are necessary to protect the health, safety or welfare of the residents and to provide for an appropriate continuum of care, but shall not be inconsistent with the residential nature of the living accommodations and the family atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board of Nursing under ORS 678 150 (9)

(2) The department shall make rules to assure that any employe who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation

(3) For adult foster homes in which clients reside for whom the department pays for care, including homes in which the provider and the resident are related, the department may require substantial compliance with its rules relating to standards for care of the client as a condition for paying for care

(4) By order the director may delegate authority under this section to personnel other

than of Senior Services Division and Mental Health Division

(5) The department may commence a suit in equity to enjoin maintenance of an adult foster home if

(a) The home is operated without a valid license under this section, or

(b) After the license to maintain the home is ordered suspended or revoked, a reasonable time for placement of residents in other facilities has been allowed but such placement has not been accomplished

(6) The department shall establish by rule the maximum capacity of adult foster homes, including all nonrelated and related persons receiving residential care and day care

(7) Any person who violates a provision of ORS 443 705 to 443 825 or the rules adopted thereunder may be punished by a civil penalty, to be fixed by the director by rule, not to exceed \$50 per violation, to a maximum of \$100 or, per occurrence of substantiated abuse, a maximum of \$250 [1983 c 629 §8, 1985 c 663 §7, 1987 c 369 §2, 1987 c 430 §2, 1987 c 431 §2]

443.780 Exemption where county has licensing and inspection program (1) The director may exempt from the license, inspection and fee provisions of ORS 443 705 to 443 825 adult foster homes in those counties where there is a county agency which provides similar programs for licensing and inspection that the director finds are equal to or superior to the requirements of ORS 443 705 to 443 825

(2) ORS 443 775 (2) applies regardless of any exceptions granted to a county agency [1985 c 663 §11]

443.790 Authority of director to impose civil penalty; factors to be considered. (1) In addition to any other liability or penalty provided by law, the director may impose a civil penalty on a person for any of the following.

(a) Violation of any of the terms or conditions of a license issued under ORS 443 735

(b) Violation of any rule or general order of the department that pertains to a facility

(c) Violation of any final order of the director that pertains specifically to the facility owned or operated by the person incurring the penalty

(d) Violation of ORS 443 745 or of rules required to be adopted under ORS 443 775

(2) A civil penalty may not be imposed under subsection (1) of this section and this subsection for violations other than those involving health,

safety or welfare of a resident or of the rules required to be adopted by ORS 443 775 unless a violation is found on two consecutive surveys of the facility. The director in every case shall prescribe a reasonable time for elimination of a violation.

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

(b) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

(3) In imposing a civil penalty, the director shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules or orders pertaining to facilities.

(c) The economic and financial conditions of the person incurring the penalty.

(d) The immediacy and extent to which the violation threatens the public health or safety. [1987 c 431 §§4-6]

443.795 Notice of penalty; application for hearing. (1) Any civil penalty imposed under ORS 443 790 (3) shall become due and payable when the person incurring the penalty receives a notice in writing from the director. The notice referred to in this section shall be sent by registered or certified mail and shall include:

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

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

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

(d) A statement of the right of the person to request a hearing.

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

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183 310 to 183 550. [1987 c 431 §5]

443.805 Order assessing penalty; judgment; lien; execution. (1) If the person notified fails to request a hearing within the time specified in ORS 443 795, or if after a hearing the person is found to be in violation of a license, rule or order listed in ORS 443 790 (1), an order may be entered by the division assessing a civil penalty:

(2) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property in the county owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. [1987 c 431 §7]

443.815 Judicial review of penalties. Judicial review of civil penalties imposed under ORS 443 790 shall be as provided under ORS 183 480, except that the court may, in its discretion, reduce the amount of the penalty. [1987 c 431 §8]

443.825 Disposition of penalties recovered. All penalties recovered under ORS 443 790 to 443 815 shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [1987 c 431 §9]

HOSPICE PROGRAMS

443.850 Definitions for ORS 443.850 to 443.870. As used in ORS 443 850 to 443 870:

(1) "Hospice program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life threatening disease with a limited prognosis.

(2) "Hospice services" means items and services provided to a patient-family unit by a hospice program or by other individuals or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include acute respite, home care and bereavement services provided to meet the physical, psychosocial, spiritual and other special needs of a patient-family unit during the final stages of illness, dying and the bereavement period.

(3) "Interdisciplinary team" means a group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the patient-family unit, attending physician and one or more of the following hospice program personnel: Physician, nurse, nurse's aide, occupa-

tional therapist, physical therapist, trained lay volunteer, clergy or spiritual counselor and credentialed mental health professional such as psychiatrist, psychologist, psychiatric nurse or social worker

(4) "Patient-family unit" includes an individual who has a life threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the individual

(5) "Person" includes individuals, organizations and groups of organizations [1987 c 398 §1]

443.860 Certification or accreditation required; exception. (1) Except as provided in subsections (2) and (3) of this section, on and after January 1, 1988, no person shall establish, conduct or maintain a hospice program providing hospice services, or hold itself out to the public as a hospice program, without

(a) Certification by the Health Division as a program of services eligible for Medicare reimbursement,

(b) Accreditation by the Oregon Hospice Association, or

(c) Accreditation by the Joint Commission on Accreditation of Hospitals as a hospice program

(2) On and after January 1, 1988, any person who is in the process of developing a hospice program may use the term "hospice" to describe and refer to the program of services during its development for up to two years. However, no hospice services to patients or their families shall be provided by a hospice until accreditation or certification is obtained

(3) Any person operating a hospice program on January 1, 1988, may continue operation for

up to one year without the certification or accreditation required under subsection (1) of this section [1987 c 398 §§2, 3]

443.870 Hospice program registry. The Oregon Hospice Association shall maintain and operate a registry of all certified and accredited hospice programs and shall make such records available to the public [1987 c 398 §4]

PENALTIES

443.990 [Subsection (2) enacted as 1963 c 659 §14, 1969 c 641 §17 repealed by 1977 c 717 §23]

443.991 Penalties. (1) Violation of ORS 443 015 is punishable as a Class C misdemeanor

(2) Violation of any provision of ORS 443 400 to 443 455 is a Class B misdemeanor. In addition, the department may commence an action to enjoin operation of a residential facility

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

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed

(3) Violation of ORS 443 725 is punishable as a Class C misdemeanor

(4) Violation of any provision of ORS 443 755 is a Class B misdemeanor. In addition, the department may commence an action to enjoin operation of an adult foster home

(a) When an adult foster home is operated without a valid license, or

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed [Subsection (1) enacted as 1977 c 738 §11, subsection (2) enacted as 1977 c 717 §14, 1979 c 284 §144, 1985 c 663 §8]