Chapter 410

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Senior and Disability Services

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SENIOR AND DISABLED SERVICES
(Generally)

410.010 State policy for older and disabled citizens. (1) The Legislative Assembly finds and declares that, in keeping with the traditional concept of the inherent dignity of the individual in our democratic society, the older citizens of this state are entitled to enjoy their later years in health, honor and dignity, and disabled citizens are entitled to live lives of maximum freedom and independence.

(2) The Legislative Assembly declares that the policy of this state is to provide and encourage programs necessary to fulfill the commitment stated in subsection (1) of this section and that the purpose of policies stated in this section and ORS 410.020 is to provide a guide for the establishment and implementation of programs for older citizens and disabled citizens in this state. It further declares that the programs shall be initiated, promoted and developed through:

(a) Volunteers and volunteer groups;

(b) Partnership with local governmental agencies;

(c) Coordinated efforts of state agencies;

(d) Coordination and cooperation with federal programs;

(e) Partnership with private health and social service agencies;

(f) A designated state agency that will encourage and work with older citizens and their organizations, that will coordinate state and local programs, that will encourage and monitor federal programs and that will act as an advocate for older Oregon citizens; and

(g) A designated state agency that will encourage and work with disabled citizens and their organizations, that will coordinate state and local programs, that will encourage and monitor federal programs and that will act as an advocate for disabled Oregon citizens.

(3) The Legislative Assembly declares that it shall be the policy of this state to give special attention to the special concerns of our most frail and vulnerable older citizens. Furthermore, it shall be the policy of this state to support strongly the full development and participation of disabled citizens in all aspects of social, political and community life.

(4) Recognizing the diversity in geography, economy and life styles in Oregon and the diversity of local senior citizen networks, the Legislative Assembly declares that it is the policy of this state to avoid complete uniformity in planning and administering programs for older citizens and to encourage and emphasize local control to achieve the most effective blend of state and local authority, not precluding the ability of the state to perform its mandated responsibilities for planning and administration. Multipurpose senior centers may be considered as focal points for the delivery of services to older citizens in each community where practicable. Disability services should also be consolidated where possible to provide efficient and convenient delivery of services to disabled citizens. [1981 c.191 §1; 1985 c.180 §1; 1989 c.224 §70]

410.020 Implementation of state policy. In carrying out the policies stated in ORS 410.010, the state shall:

(1) Coordinate the effective and efficient provision of community services to older citizens and disabled citizens so that the services will be readily available to the greatest number over the widest geographic area; assure that information on these services is available in each locality, utilizing whenever possible existing information services; and assure that each new service receives maximum publicity at the time it is initiated.

(2) Assure that older citizens and disabled citizens retain the right of free choice in planning and managing their lives; by increasing the number of options in life styles available to older citizens and disabled citizens; by aiding older citizens and disabled citizens to help themselves; by strengthening the natural support system of family, friends and neighbors to further self-care and independent living; and by encouraging all programs that seek to maximize self-care and independent living within the mainstream of life.

(3) Assure that health and social services be available that:

(a) Allow the older citizen and disabled citizen to live independently at home or with others as long as the citizen desires without requiring inappropriate or premature institutionalization.

(b) Encourage, by expansion of existing programs for older citizens and disabled citizens, by school programs, by meals-on-wheels, by counseling or by other means, public and private development of nutrition programs for older citizens and disabled citizens that prevent or minimize illness or social isolation.

(c) Assure that if institutionalization is necessary, the institution should be of the highest quality where the older citizen and disabled citizen may live in dignity.

(d) Protect the older citizen and disabled citizen from physical and mental abuse and from fraudulent practices.

(4) Foster both preventive and primary health care, including mental and physical health care, to keep older citizens and disabled citizens active and contributing members of society; and encourage full restorative services for those older citizens and disabled citizens who require institutional care to increase the possibility of their return to independent living.

(5) Encourage public and private development of suitable housing for older citizens and disabled citizens, designed and located consistent with their special needs and available at costs they can afford.

(6) In implementing subsections (1) to (5) of this section, develop and seek support for plans to assure access to information, counseling and screening, as appropriate, by persons potentially in need of long term care without regard to the person's income.

(7) Recognize the necessity for a variety of ways to help older citizens and disabled citizens maintain sufficient income to meet their needs.

(8) Encourage local transportation systems and volunteer groups to meet the daily transportation needs of older citizens and disabled citizens and to make accessible to them a broad range of services and programs, including social, health and religious services and programs.

(9) Encourage and develop meaningful employment opportunities for older citizens and disabled citizens in positions commensurate with their abilities; eliminate discrimination to such employment; and whenever possible, employ older citizens in programs that affect older citizens and disabled citizens in programs that affect disabled citizens.

(10) Involve older citizens and disabled citizens in the decision-making process for programs affecting their lives. Recognizing the ability of older citizens and disabled citizens to be advisors to the Legislative Assembly, agencies and professional staff, the Legislative Assembly intends that whenever possible older citizens and disabled citizens should assist in the development of policies affecting their lives.

(11) Assure to older citizens and disabled citizens the right to pursue activities within the widest range of civic, cultural, entertainment and recreational opportunities by opening such opportunities to participation by older citizens and disabled citizens, by encouraging older citizens and disabled citizens to utilize their capabilities by participating in government and by assuring them the right to serve.

(12) Make public educational facilities available to older citizens and disabled citizens and their organizations so older citizens and disabled citizens may pursue their educational interests; and encourage all institutions of learning and other appropriate agencies to develop and provide by outreach as well as by traditional means special education programs to meet the needs and interests of older citizens by addressing the problems and opportunities of aging and by responding to older citizens' interests in liberal arts as well as their interests in hobby and recreation courses.

(13) Encourage the development of barrier-free construction and the removal of architectural barriers so that more facilities are accessible to older citizens and disabled citizens.

(14) Promote development of programs to educate persons who work with older citizens in gerontology and geriatrics and encourage qualified persons to seek such education.

(15) Encourage immediate application by both public and private agencies of knowledge acquired from research that can sustain and improve the health and happiness of older citizens and disabled citizens.

(16) Recognize that older citizens who retire should be able to do so in honor and dignity.

(17) Encourage and support:

(a) Distribution of literature which accurately presents facts concerning aging and disabilities of citizens.

(b) Efforts of schools, churches and other institutions, in teaching children and youth about the process of aging and disabilities of citizens so as to correct fallacies handed down from one generation to another.

(c) Intergenerational programming and participation by community organizations and institutions to promote better understanding and warm social interaction and to counteract the tendency to isolation of individuals who are elderly or disabled.

(d) Correction of stereotyping of individuals who are elderly or disabled in school texts and other books, newspapers, magazines, radio and television by encouraging review and analysis of these media by publishers, company ownership or other appropriate agencies.

(e) Efforts which show that many misconceptions and stereotypes have no basis in fact so older citizens and disabled citizens will be freed from the destructive tendency to socially conform by embracing these fallacies. [1981 c.191 §2; 1983 c.312 §2; 1985 c.180 §2; 1989 c.224 §71]

410.030 Legislative findings on long term care options. The Legislative Assem-

bly of the State of Oregon finds the following regarding older citizens and disabled citizens:

(1) That there are many older or disabled Oregonians who face difficulties in maintaining self-care and independent living within the mainstream of life, and who have not yet exhausted their financial resources. These persons are often dependent upon providers of care for advice regarding 24-hour care. These persons and providers are not always aware of options to, or within, such care;

(2) That inappropriate or premature institutionalization of persons who have not exhausted their financial resources often leads to exhaustion of those resources, and to the expectation by these persons and providers that continued financing of inappropriate institutional care shall be available under Title XIX. However, under these circumstances, transfer of the person to appropriate, less costly noninstitutional or alternative institutional care, if available, is necessary in order that limited public funds can be utilized to provide appropriate care to as many persons in need as possible; and

(3) That to minimize the need for such disruptive transfers, it is in the interest of older or disabled Oregonians and of providers of care that the Senior and Disabled Services Division, or any designated state agency, develop plans for assuring access to information, counseling and screening, as appropriate, by persons potentially in need of long term care without regard to the person's income. [1983 c.312 §1; 1985 c.180 §3; 1989 c.224 §72]

410.040 Definitions for ORS 410.040 to 410.320. As used in ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630:

(1) "Appropriate living arrangement" means any arrangement for an older citizen or disabled citizen in a residential setting which is appropriate for the individual considering, in order of priority, the following criteria:

(a) Personal desires and goals of the individual;

(b) The right of the individual to live as independently as possible, in the least restrictive environment; and

(c) The cost of the living arrangement compared to other types of living arrangements, based on the criteria in paragraphs (a) and (b) of this subsection.

(2) "Area agency" means:

(a) An established or proposed type A or type B Area Agency on Aging within a planning and service area designated under Section 305 of the Older Americans Act; or

(b) Any public or nonprofit private agency which is designated as a type A or type B Area Agency on Aging under Section 305 of the Older Americans Act.

(3) "Area agency board" means the local policy-making board which directs the actions of the area agency within state and federal laws and regulations.

(4) "Disabled person" means a person with a physical or mental disability:

(a) Who is eligible for Supplemental Security Income or for general assistance from the Adult and Family Services Division; and

(b) Who meets one of the following criteria:

(A) Is mentally retarded or developmentally disabled and resides in or needs placement in a residential program administered by the Senior and Disabled Services Division.

(B) Is mentally or emotionally disturbed and resides in or needs placement in a residential program administered by the Senior and Disabled Services Division.

(C) Is an alcohol or drug abuser and resides in or needs placement in a residential program administered by the Senior and Disabled Services Division.

(D) Has a physical or mental disability other than those described in subparagraphs (A) to (C) of this paragraph.

(5) "Division" means the Senior and Disabled Services Division of the Department of Human Resources.

(6) "Elderly" or "elderly persons" means persons who are served by type A area agencies or type B area agencies or by the Senior and Disabled Services Division.

(7) "Local government" means a political subdivision of the state whose authority is general or a combination of units of general purpose local governments.

(8) "Preadmission screening" means a professional program within the Senior and Disabled Services Division or type B area agencies, with staff that includes registered nurses and social workers, that assesses the needs of clients and recommends appropriate placements in residential programs administered by the Senior and Disabled Services Division or type B area agencies.

(9) "Protective services" means a service to be provided by the Senior and Disabled Services Division directly or through type B area agencies, in response to the need for protection from harm or neglect to elderly persons.

(10) "Title XIX" means the programs in Title XIX of the Social Security Act transferred from the long term care unit of the health and social services section of the Adult and Family Services Division to the

Senior and Disabled Services Division but does not include Title XIX programs, other than home health, personal care and nursing home programs, or Title XIX programs in other divisions of the Department of Human Resources.

(11) "Title XX" means the programs in Title XX of the Social Security Act transferred from the Adult and Family Services Division to the Senior and Disabled Services Division, but does not include Title XX programs in other divisions of the Department of Human Resources.

(12) "Type A area agency" means an area agency:

(a) For which either the local government or the area agency board does not agree to accept local administrative responsibility for Title XIX and Title XX; and

(b) That provides a service to persons 60 years of age or older.

(13) "Type B area agency" means an area agency:

(a) For which the local government agrees to accept local administrative responsibility for Title XIX and Title XX; and

(b) That provides a service to persons 60 years of age or older and disabled persons who require services similar to those required by persons 60 years of age or older, or both. [1981 c.784 §1; 1985 c.180 §4; 1989 c.224 §73]

410.050 General policy. The State of Oregon finds that the needs of the elderly population can be best served and planned for at the local community level; that a longer life expectancy and a growing elderly population demands services be provided in a coordinated manner and a single local agency system for such services be instituted; that local resources and volunteer help will augment state funds and needed manpower; that local flexibility in providing services should be encouraged; and that a single state agency should regulate and provide leadership to insure that the elderly citizens of Oregon will receive the necessary care and services at the least cost and in the least confining situation. The State of Oregon further finds that within budgetary constraints, it is appropriate that savings in nursing home services allocations within a planning and service area be reallocated to alternative care services under Title XIX, Title XX and Oregon Project Independence in that area. [1981 c.784 §2]

410.060 Policy for disabled persons served by state. (1) It is the policy of the State of Oregon that disabled persons served by the Senior and Disabled Services Division, or any designated state agency, shall also receive necessary services, as appropriate for their needs, from other state agencies and divisions.

(2) In carrying out the provisions in subsection (1) of this section, the Department of Human Resources shall insure that the Senior and Disabled Services Division, or any designated state agency, negotiates interagency agreements and coordinates services with the Mental Health and Developmental Disability Services Division, Vocational Rehabilitation Division, Employment Division, Children's Services Division and the Department of Education for the provision of appropriate services to disabled clients of the Senior and Disabled Services Division, or any designated state agency.

(3)(a) Prior to approval of an appropriate living arrangement, as defined in ORS 410.040, administered by the Senior and Disabled Services Division, or any designated state agency, all disabled persons shall be assessed by preadmission screening to insure the appropriateness of the living arrangement.

(b) If a disabled person is diagnosed as, or is reasonably believed to be, mentally retarded or developmentally disabled, preadmission screening shall include assessment by the Diagnosis and Evaluation Service of the Mental Health and Developmental Disability Services Division.

(4) The Senior and Disabled Services Division, or any designated state agency, in coordination with the Mental Health and Developmental Disability Services Division, Children's Services Division, Vocational Rehabilitation Division and the Department of Education shall work with nursing homes which have one or more residents under 18 years of age to develop a program appropriate to the needs of such residents. [1981 c.784 §4; 1985 c.180 §5; 1989 c.224 §74]

(State Administration)

410.070 Senior and Disabled Services Division; duties. (1) The Senior and Disabled Services Division is created in the Department of Human Resources. The division shall administer laws and programs relating to social, health and protective services to elderly persons and disabled persons, and shall promote the hiring of otherwise qualified persons who are certifiably disabled for positions within the programs it manages. Family support services provided by the Senior and Disabled Services Division shall be delivered in accordance with the principles described in ORS 417.342 and 417.344.

(2) The division shall:

(a) Serve as the central state agency with primary responsibility for the planning, coordination, development and evaluation of pol-

icy, programs and services for elderly persons and disabled persons in Oregon.

(b) Function as the designated state unit on aging, as defined in the Older Americans Act of 1965.

(c) With the advice of the Governor's Commission on Senior Services and the Oregon Disabilities Commission, develop long-range state plans for programs, services and activities for elderly persons and disabled persons. State plans should be revised annually and should be based on area agency plans, statewide priorities and state and federal requirements.

(d) Have the authority to transfer state and federal funds, except Title III of the Older Americans Act funds, from one area agency to another area agency or from one program or service to another program or service after consultation with the area agencies involved in the transfer. However, no area agency shall suffer a reduction in state or federal funds due to increased local funds.

(e) Receive and disburse all federal and state funds allocated to the division and solicit, accept and administer grants, including federal grants or gifts made to the division or to the state and enter into contracts with private entities for the purpose of providing or contracting for case management services for long term care insurance for the benefit of elderly persons and disabled persons in this state.

(f) Provide technical, training and program assistance to area agencies and assist them to provide such assistance to public and private agencies and organizations.

(g) Assist area agencies to stimulate more effective use of existing resources and services for elderly persons and develop programs, opportunities and services which are not otherwise provided for elderly persons, with the aim of developing a comprehensive and coordinated system for the delivery of social services to elderly persons.

(h) Assist local division units and area agencies which have assumed responsibility for disabled services to stimulate more effective use of existing resources and to develop programs, opportunities and services which are not otherwise provided for disabled persons, with the aim of developing a comprehensive and coordinated system for the delivery of social services to disabled persons.

(i) Serve within government and in the state at large as an advocate for elderly persons and disabled persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety and welfare of elderly persons and disabled persons and by assisting elderly persons and disabled persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied.

(j) Process fiscal and client data for all area agencies.

(k) Conduct regulatory functions with regard to program operation, by adopting rules for providing social services, including protective services, to elderly persons and disabled persons who need services that the division or area agencies are authorized to provide and rules for standard rate setting and quality assurance.

(L) Provide information and technical assistance to the Governor's Commission on Senior Services and the Oregon Disabilities Commission and keep the commissions continually informed of the activities of the division.

(m) Make recommendations for legislative action to the Governor and to the Legislative Assembly, after consultation with the Governor's Commission on Senior Services and the Oregon Disabilities Commission.

(n) Conduct research and other appropriate activities to determine the needs of elderly persons and disabled persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons and disabled persons to meet those needs.

(o) Maintain a clearinghouse for information related to the needs and interests of elderly persons and disabled persons.

(p) Provide area agencies with assistance in applying for federal, state and private grants and identifying new funding sources.

(3) In addition to the requirements of subsection (2) of this section, the division shall:

(a) Determine type A and type B area agencies annual budget levels for Oregon Project Independence and Title III of the Older Americans Act expenditures.

(b) For type B area agencies:

(A) Determine annual budget levels for planning Title XIX and Title XX reimbursed services. In determining the budget levels, the division shall retain contingency reserves against overruns and transfers in use of Title XIX and Title XX funds.

(B) Provide timely management information so the area agencies and the division's disability services units can manage Title XIX and Title XX reimbursements within budgeted levels.

(C) Determine annual budget levels for planning and administering programs relating to social, health, independent living and protective services for disabled persons for the division's disability services units and type B area agencies which have assumed local responsibility for the programs and clients transferred under subsection (2) of section 2, chapter 787, Oregon Laws 1989.

(c) Make payments for services within a central processing system for:

(A) A type A area agency, at the request of the agency, for Oregon Project Independence or Title III of the Older Americans Act expenditures, or both.

(B) A type B area agency, for Title XIX, Title XX and Oregon Project Independence expenditures, and at the request of the agency, for Title III of the Older Americans Act expenditures.

(d) Assume program responsibility for Title XIX and Title XX programs in areas served by type A area agencies and in areas where no area agency is designated.

(e) Assume planning and program responsibilities for disabled persons in areas served by type A area agencies and in areas where no area agency exists.

(4) When developing programs affecting elderly persons, the division shall consult with the Governor's Commission on Senior Services.

(5) When developing programs affecting disabled persons, the division shall consult with the Oregon Disabilities Commission. [1981 c.784 §3; 1989 c.224 §75; 1989 c.787 §1; 1991 c.122 §12]

410.080 Department of Human Resources as single state agency for federal programs. (1) The Department of Human Resources is the designated single state agency for all federal programs under ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630.

(2) Except as provided in ORS 410.070 (3)(d) and 410.100, the administration of services to clients under ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630 shall be through area agencies, and shall comply with all applicable federal regulations. [1981 c.784 §7]

410.090 Department of Human Resources to implement supportive social services for persons 60 and older; rulemaking. (1) The Department of Human Resources is directed to develop and place in effect a program of supportive social services for persons age 60 or older.

(2) The Department of Human Resources is authorized to develop and adopt such rules as necessary for the sound, efficient and economical administration of the provisions of this section and ORS 410.320 to 410.340, including the implementation of a fee for service schedule based upon ability to pay, and to assure that no eligible person, resident in a skilled nursing home or intermediate care facility, shall be removed and placed in an alternative care program unless such services are determined to be more appropriate for the individual citizen based upon appropriate, individual, service considerations. [Formerly 184.865]

410.100 When state to administer area agency programs. (1) In the event that a local government withdraws the designation of an area agency, or the division withdraws the area agency designation in accordance with the Older Americans Act, the division shall administer the services to clients previously performed by the area agency until a new area agency is designated.

(2) The division may withdraw any particular program or service, except Title III of the Older Americans Act programs, from the area agency, and administer such programs and services. Before such action is taken, the division must consult with the director of the area agency and the chief elected official of the affected local government. Such action shall be taken by the division only when it can be shown the federal or state laws or rules have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or the elderly are not receiving appropriate services within available resources. Withdrawal of any particular program or service is appealable to the Director of Human Resources and the Governor. [1981 c.784 §10]

410.110 Revolving fund. (1) On written request of the Senior and Disabled Services Division, the Executive Department shall draw warrants on amounts appropriated to the Senior and Disabled Services Division for operating expenses for use by the division as a revolving fund. The revolving fund shall not exceed the aggregate sum of $50,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the division may draw checks.

(2) The revolving fund may be used by the division to pay for travel expenses for employees of the division and for any consultants or advisers for whom payment of travel expenses is authorized by law, or advances therefor, or for purchases required from time to time or for receipt or disbursement of federal funds available under federal law.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the division and by the

Executive Department. When such claims have been approved, a warrant covering them shall be drawn in favor of the division and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund. [1981 c.784 §24]

410.120 Senior and Disabled Services Account. (1) There is established in the General Fund of the State Treasury an account to be known as the Senior and Disabled Services Account. All moneys in the Senior and Disabled Services Account are continuously appropriated for and shall be used by the Senior and Disabled Services Division for the respective purposes authorized by law. The moneys in the Senior and Disabled Services Account and all appropriations for the Senior and Disabled Services Division shall be subject to allotment made by the Executive Department.

(2) The Senior and Disabled Services Division shall keep a record of all moneys credited to and deposited in the Senior and Disabled Services Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

(3) The unobligated balance in the Senior and Disabled Services Account on June 30 of each odd-numbered year shall be determined by the Senior and Disabled Services Division as of September 30 following the close of each biennium and certified to the Executive Department. The amount certified pursuant to this subsection shall revert to the General Fund and become available for general governmental purposes. [1981 c.784 §25; 1989 c.787 §11]

410.130 Senior and Disabled Services Division personnel. The assistant director may appoint and employ such personnel as may be necessary for the Senior and Disabled Services Division and appoint and fix the compensation of all assistants and employees of the division. [1981 c.784 §26]

410.140 Rules on records. The Senior and Disabled Services Division shall make and enforce rules governing the custody, use and preservation of the records, papers, files and communications by any other agency or department of government or person to which the records may be furnished. Use shall be limited to the purposes for which the records are furnished and by the provisions of the law under which they may be furnished. [1981 c.784 §27]

410.150 Use of files; confidentiality; privileged communications. For the protection of applicants for and recipients of services, the Senior and Disabled Services Division shall not disclose or use the contents of any records, files, papers or communications for purposes other than those directly connected with the administration of the laws of Oregon, and these records, files, papers and communications are considered confidential subject to the rules of the Senior and Disabled Services Division, except as otherwise provided in ORS 411.325 to 411.335. In any judicial proceedings, except proceedings directly connected with the administration of public assistance laws, their contents are considered privileged communications. [1981 c.784 §28]

410.160 Limitation on estate claims. Nothing in ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630 extends estate claims requirements and procedures related to certain Title XIX and Title XX services under current Oregon statutes and federal regulations to other services. [1981 c.784 §36]

410.180 Long term care reimbursement audit manual. In carrying out the reimbursement system stated in the state policy on long term care reimbursement, the Senior and Disabled Services Division shall develop, publish and make available an audit manual. The audit manual shall include clear guidelines on costs that are approved for reimbursement. [1983 c.406 §2]

Note: 410.180 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 410 but not to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

410.190 Representation of corporation in contested case proceedings before division. (1) Notwithstanding ORS 8.690, 9.160, 9.320, ORS chapter 180, ORS 203.145 or other law, in any contested case proceeding before the Senior and Disabled Services Division, a corporation may be represented by an attorney or by any officer or authorized agent or employee of the corporation.

(2) As used in this section, "corporation" includes a public or private corporation, whether or not organized for profit. [1987 c.428 §34b]

Note: 410.190 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 410 by legislative action but not to any series therein. See Preface to Oregon Revised Statutes for further explanation.

(Area Agencies)

410.210 Area agency advisory council; membership; duties. (1) Each area agency shall have an area agency advisory council, with members appointed by the area agency board.

(a) For a type A area agency, membership of the council shall include consumers of services under Senior and Disabled Ser-

vices Division programs, including low income, minority and disabled persons.

(b) For a type B area agency, membership of the council shall include persons described in paragraph (a) of this subsection and disabled persons. Representation of disabled persons on the council shall be in proportion to the ratio of such persons to all persons in the jurisdiction of the area agency who received Title XIX and Title XX services, or both, during the preceding 12-month period, but shall not be fewer than one.

(2) Each area agency advisory council shall:

(a) Recommend basic policy guidelines for the administration of the activities of the area agencies on behalf of elderly persons, and advise the area agency on questions of policy.

(b) Advise the area agency with respect to development of the area plan and budget, and review and comment on the completed area plan and budget before its transmittal to the Assistant Director for Senior and Disabled Services.

(c) Review and evaluate the effectiveness of the area agency in meeting the needs of elderly persons in the planning and service area.

(d) Meet at least quarterly. The meetings are subject to ORS 192.610 to 192.690. [1981 c.784 §11; 1989 c.224 §76; 1991 c.67 §101]

410.220 Use of state and local resources. Each area agency may use, with the consent of state and municipal departments and agencies, their services, equipment, facilities and personnel, and pay therefor, within the limits of its resources, as agreed between the agencies and cooperate with other public and private agencies as to the use of services, equipment and facilities. [1981 c.784 §14]

410.230 Expenditure of local funds not required. Nothing in ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630 requires an area agency or local governmental unit to expend local funds for the purpose of maintaining or expanding services to elderly and disabled persons. [1981 c.784 §37; 1989 c.224 §77]

(Type A Agencies)

410.240 Operation of type A agencies. On and after October 1, 1981, a type A area agency shall operate in the same manner as it operated with local administrative responsibility for Title III of the Older Americans Act and Oregon Project Independence before October 1, 1981. Nothing in ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630 requires a type A area agency to become a type B area agency. [1981 c.784 §8]

410.250 Duties of type A agencies. Each type A area agency shall:

(1) Conduct local planning functions for Title III of the Older Americans Act and Oregon Project Independence.

(2) Develop a local plan for service delivery that complies with federal and state requirements and is in accord with locally determined objectives consistent with the state policy on aging. This plan shall be reviewed and approved by the division.

(3) Assess the needs of elderly persons within the planning and service delivery area for service for social and health services, and determine what resources are currently available to meet those needs.

(4) Assume the responsibility of determining services required to meet the needs of elderly persons, assure that such services are provided within the resources available and determine when such services are no longer needed.

(5) Endeavor to coordinate and expand existing resources in order to develop within its planning and service area a comprehensive and coordinated system for the delivery of social and health services to elderly persons.

(6) Serve as an advocate within government and within the community at large for the interests of elderly persons within its planning and service area.

(7) Make grants to or enter into contracts with any public or private agency for the provision of social or health services not otherwise sufficiently available to elderly persons within the planning and service area.

(8) Monitor and evaluate the activities of its service providers to insure that the services being provided comply with the terms of the grant or contract. Where a provider is found to be in breach of the terms of its grant or contract, the area agency shall enforce the terms of the grant or contract.

(9) Conduct research, evaluation, demonstration or training activities appropriate to the achievement of the goal of improving the quality of life for elderly persons within its planning and service area.

(10) Comply with division requirements that have been developed in consultation with the area agencies for client and fiscal information and provide to the division information necessary for federal and state reporting, program evaluation, program management, fiscal control and research needs. [1981 c.784 §12]

(Type B Agencies)

410.270 Operation of type B agencies. (1) A local government shall be responsible for all actions of a type B area agency in its jurisdiction, including but not limited to the accountability for funds and compliance with federal and state laws and rules. Such responsibility shall include all geographic areas in which the type B area agency is designated to operate.

(2) The respective local government shall appoint a director of the type B area agency in its jurisdiction who must meet minimum qualifications established by the division. The director shall serve with the continuing approval of the Assistant Director for Senior and Disabled Services. Continuing approval may be withdrawn by the assistant director only when it can be shown that the state or federal rules have not been complied with by the type B area agency, state or federal funds are not being expended for the purposes for which they were intended or the elderly are not receiving appropriate services within available funds. Withdrawal of continuing approval is appealable to the Director of Human Resources and the Governor by the local government. [1981 c.784 §9; 1991 c.67 §102]

410.280 Duties of type B agencies. Each type B area agency shall:

(1) Comply with the provisions of ORS 410.250 (1) and (3) to (10).

(2) Conduct local planning functions for Title XIX and Title XX of the Social Security Act.

(3) Develop a local plan for service delivery subject to review and approval by the division and the responsible unit of local government that complies with federal and state requirements and in accord with locally determined objectives consistent with the state policy on aging.

(4) Provide protective services within available resources. [1981 c.784 §13]

410.290 Conditions to designation as type B agency; plan of operation. (1) Prior to the designation of an area agency as a type B area agency, the area agency, the responsible unit of local government and the division must jointly agree upon a plan under which the area agency will operate.

(2) The plan described in subsection (1) of this section shall:

(a) Establish an administrative structure and qualifications for key personnel that reflect the population to be served.

(b) Be developed in coordination with the appropriate local mental health authority.

(c) Include any necessary interagency agreements regarding which agency is to have responsibility for each specific group of clients under 60 years of age.

(d) Address necessary transfers of staff, available equipment and administrative and service funds.

(e) Be prepared with the participation of potentially affected clients, staff and other individuals at the local level, including but not limited to physically disabled individuals. [1981 c.784 §16; 1989 c.224 §78]

410.300 When type B agency may contract for services of state employees; effect; plan. (1) A type B area agency may contract with the division for services of state employees or have such employees transferred to employment by the area agency by transfer agreement.

(2) State employees whose services have been contracted to a type B area agency shall be supervised for program purposes by the area agency.

(3) If state employees are transferred to a type B area agency, the provisions of ORS 236.610 to 236.650 shall apply.

(4) Prior to transfer of any state employee to any other public employer under ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630, at a date to be determined by the Assistant Director for Senior Services, each type B area agency shall prepare a plan in coordination with local staff of the Adult and Family Services Division for implementation of ORS 327.525, 409.010, 410.040 to 410.320, 411.590 and 441.630. The plan shall show how statutory responsibilities are to be met and how all staff are to be utilized. [1981 c.784 §15]

GOVERNOR'S COMMISSION ON SENIOR SERVICES

410.320 Governor's Commission on Senior Services. (1) The Governor's Commission on Senior Services is created. The commission shall consist of at least 21 members appointed by the Governor for terms of three years.

(2) Prior to making appointments, the Governor shall request and consider recommendations from the area agencies on aging and other interested senior organizations. The Governor shall designate a member to serve at the pleasure of the Governor as chairperson for a term of two years with such duties as the Governor shall prescribe. The membership of the commission shall be composed of persons broadly representative of major public and private agencies who are experienced in or have demonstrated particular interest in the special needs of elderly

persons, including persons who have been active in organizations and advocates on behalf of elderly persons. Additionally, membership shall include persons who are active in advocacy organizations representing the interests of disabled persons who are served in programs under the Senior and Disabled Services Division and consumers of services under the Senior and Disabled Services Division programs, including low income, minority and disabled persons. At least a majority of members shall be 60 years of age or older.

(3) The Governor's Commission on Senior Services shall advise the Governor, the Director of the Department of Human Resources and the Assistant Director for Senior and Disabled Services on needs of elderly persons, and recommend actions by the Governor, the Department of Human Resources, the Senior and Disabled Services Division, other governmental entities and the private sector, appropriate to meet such needs.

(4) The commission shall have authority to study programs and budgets of all state agencies which affect elderly persons. After such study, the commission shall make recommendations to the Governor and to the agencies involved. Such recommendations shall be designed to provide coordination of programs for elderly persons, to avoid unnecessary duplication in provision of services, and to point out gaps in provision of services. The commission shall also recommend development of a comprehensive plan for delivery of services to elderly persons. In carrying out these tasks, the commission shall coordinate its efforts with other advisory groups within the Department of Human Resources to avoid duplication of effort.

(5) The commission shall promote responsible statewide advocacy for elderly persons.

(6) Members of the commission, other than legislators, shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 184.900; 1983 c.740 §130; 1989 c.224 §79; 1991 c.67 §103]

410.330 Legislator members; expenses. (1) In addition to the members of the Governor's Commission on Senior Services appointed under ORS 410.320, the President of the Senate shall appoint one member from the Senate and the Speaker of the House of Representatives shall appoint one member from the House of Representatives. If the Speaker of the House of Representatives or the President of the Senate is a member, either may designate from time to time an alternate from among the members of the appropriate house to exercise powers as a member of the commission except that the alternate shall not preside if the Speaker or President is chairperson.

(2) The members of the commission appointed under subsection (1) of this section shall be entitled to payment of compensation and expenses under ORS 171.072 from funds appropriated to the Legislative Assembly. [Formerly 184.905; 1983 c.740 §131; 1987 c.879 §15]

410.340 Appointments to fill vacancies. In case of a vacancy on the Governor's Commission on Senior Services, the appointing authority shall appoint a successor for the remainder of the unexpired term. [Formerly 184.910; 1983 c.740 §132]

OREGON PROJECT INDEPENDENCE

410.410 Definitions for ORS 410.410 to 410.480. As used in ORS 410.410 to 410.480:

(1) "Authorized agency" means any organization designated by the Senior and Disabled Services Division as an area agency on aging.

(2) "Authorized service" means any service designated by the Senior and Disabled Services Division pursuant to rule to be eligible for Oregon Project Independence funding.

(3) "Division" means the Senior and Disabled Services Division of the Department of Human Resources.

(4) "Home health service" means items and services furnished to an individual by a home health agency, or by others under arrangement 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.

(5) "Service provider" means any agency or program that provides one or more authorized services under Oregon Project Independence. [1981 c.186 §1; 1983 c.740 §133]

410.420 Use of funds. (1) Funds appropriated for Oregon Project Independence shall only be expended for the following authorized services:

(a) Homemaker;

(b) Housekeeper;

(c) Chore;

(d) Escort;

(e) Home health;

(f) Personal care service;

(g) Elderly day care; and

(h) Other services authorized by the Senior and Disabled Services Division.

(2) The division shall adopt rules to implement ORS 410.410 to 410.480 and may adopt by reference rules of the Health Division and the Adult and Family Services Division that relate to activities under Oregon

Project Independence. [1981 c.186 §2; 1983 c.740 §134]

410.425 Separate accounts for persons age 60 and over and for persons with Alzheimer's disease or related disorders. The funds available for purposes of ORS 410.410 to 410.480 shall be kept in separate accounts in the General Fund. One account shall be used for funds appropriated for persons otherwise eligible who are 60 years of age or older. The other account shall be used for funds appropriated for persons otherwise eligible who have Alzheimer's disease or a related disorder. [1987 c.692 §3]

410.430 Eligibility for services under ORS 410.410 to 410.480. (1) In order to qualify for services from an authorized agency or service provider, each client or recipient must:

(a) Be 60 years old or older or has been diagnosed as having Alzheimer's disease or a related disorder;

(b) Not be receiving support or services from the Adult and Family Services Division, except food stamps; and

(c) Be assessed to be at the risk of entering an institution.

(2) Eligibility determination shall be required before any client may receive services from an authorized agency or service provider. [1981 c.186 §3; 1987 c.692 §1]

410.440 Priorities for services. (1) Eligible clients shall receive authorized services on a priority basis, with highest priorities receiving services first.

(2) Priority for receipt of authorized services shall be:

(a) Clients already receiving authorized service as long as their condition indicates services are needed.

(b) Clients who are to be placed immediately in an institution if needed authorized services are not provided.

(c) Clients who are probably to be placed in an institution if needed authorized services are not provided. [1981 c.186 §4]

410.450 Determinations of eligibility. (1) Eligibility determinations and determinations of services for Oregon Project Independence shall be made in accordance with rules of the Senior and Disabled Services Division.

(2) Determination of services shall be based on each client's financial, physical, functional, medical and social need for such services.

(3) Clients who appear eligible for services provided by the Adult and Family Services Division because of disability or age and income shall be encouraged to apply to that division for service. [1981 c.186 §5; 1983 c.740 §135]

410.460 Computation of allowable costs. Allowable costs by authorized agencies are those associated with the direct provision of services to clients and such administrative costs as may be required to assure adequate services and to provide information to the Senior and Disabled Services Division. [1981 c.186 §6; 1983 c.740 §136]

410.470 Fees for service schedules; revision; collection; records; use. (1) The Senior and Disabled Services Division shall establish fees for service schedules after consultation with area agencies on aging. The schedules may differ for different areas and for different income levels.

(2) A minimum income level and fees for service schedule shall be established and reviewed annually by the division after consulting with the Governor's Commission on Senior Services.

(3) Fees for service are to be charged to clients whose annual income exceeds the minimum, as established by rule of the division.

(4) A record of all fees for service shall be kept by each authorized agency and made available upon request to the division.

(5) Nothing prevents any client of Oregon Project Independence from making a contribution.

(6) Fees for service and any contribution must be used to expand services. [1981 c.186 §7; 1983 c.740 §137]

410.480 Required record keeping. (1) Each authorized agency and service provider shall maintain books, records, documents and accounting procedures which reflect costs and such other activities as the Senior and Disabled Services Division may require. The books, records and documents shall be made available to the division upon request.

(2) Each authorized agency shall submit to the division an audit of its financial records annually. Such audits shall be conducted by an individual licensed by the State Board of Accountancy.

(3) Fiscal and program reports shall be completed on forms provided by the division and be submitted to the division by the specified due dates.

(4) The use or disclosure by any party of any information concerning a recipient or client of authorized services described in ORS 410.410 to 410.480 for any purpose not directly connected with the administration of the responsibilities of the division, or an

authorized agency or a service provider is prohibited except with written consent of the recipient, or the legal representative thereof. [1981 c.186 §8; 1983 c.740 §138]

ADULT DAY CARE SERVICE

410.485 Legislative findings. The Legislative Assembly finds that there is a need for the Senior and Disabled Services Division to promote the availability of adult day care services and that flexibility in the combination of adult day care with other community-based services gives individuals who would otherwise be placed in restrictive care settings a greater variety of choices. [1991 c.787 §1]

410.490 Duties of division. (1) To provide greater flexibility and availability of services, the Senior and Disabled Services Division shall apply for waiver of federal statutory and regulatory requirements to make adult day care services available under ORS chapter 414.

(2) The Senior and Disabled Services Division shall adopt rules consistent with the rules adopted under ORS 410.495, that include a provision identifying adult day care as a service available for recipients eligible for medical assistance.

(3) As used in ORS 410.485 and this section, "adult day care" means community-based group programs designed to meet the needs of functionally and cognitively impaired adults through individual plans of care that are structured, comprehensive and provide a variety of health, social and related support services in protective settings during part of the day but provide less than 24-hour care. [1991 c.787 §§2, 3]

410.495 Registry for adult day care programs in state. (1) The Senior and Disabled Services Division shall develop a registry of all adult day care programs in Oregon.

(2) The division shall adopt rules, to be followed voluntarily, substantially consistent with standards established by the Oregon Association of Adult Day Care Services regarding adult day care programs. Each program in the registry shall indicate for inclusion in the registration data the extent to which the program agrees to operate in conformity with the rules adopted under this section.

(3) As used in this section, "adult day care" means a community-based group program designed to meet the needs of functionally or cognitively impaired adults through an individual plan of care. "Adult day care" means a structured, comprehensive program that provides a variety of health, social and related support services in a protective setting during part of a day but for less than 24 hours. [1991 c.788 §1]

ASSESSMENT OF LONG TERM CARE NEEDS

410.505 Definitions for ORS 410.505 to 410.545. As used in ORS 410.505 to 410.545:

(1) "Admission assessment" means a professional program that provides an assessment of the long term care needs of persons applying for or considering admission to an intermediate care facility or who have remained in a skilled nursing facility for more than 30 days, and who are not or do not appear to be Medicaid eligible. The program includes providing information regarding appropriate service and placement alternatives, including nursing facilities and community-based options. The program includes all services necessary to comply with the minimum federal criteria for preadmission screening established by the Health Care Financing Administration under the Omnibus Budget Reconciliation Act of 1987. The admission assessment shall provide the applicant with appropriate options but the recommendation of the admission assessment team is not binding; the applicant has the right to choose from any options which are available.

(2) "Intermediate care facility" means a facility as defined in ORS 442.015 and which is Medicaid certified.

(3) "Skilled nursing facility" means a facility as defined in ORS 442.015 and which is Medicaid certified. [1989 c.912 §2]

410.510 Establishment of procedure for assessment. For reasons stated in ORS 410.030 (2), the Senior and Disabled Services Division shall establish a procedure for assessment of the long term care needs of each person making application for admission to an intermediate care facility and for each person who remains in a skilled nursing facility for more than 30 days. [1989 c.912 §3]

410.515 Notice of availability of admission assessment services; disclosure form; division to provide services; maximum fees. (1) Prior to admission to an adult foster home, as defined in ORS 443.705, a residential care facility, as defined in ORS 443.400, an assisted living facility or a nursing facility that is not Medicaid certified, the person seeking admission shall be advised by the facility of the availability of admission assessment services at the person's own expense and shall sign a disclosure form indicating that the person has been so advised.

(2) The Senior and Disabled Services Division shall establish a fee and provide assessment services to such persons upon request. The division shall establish a maxi-

mum fee that certified programs may charge such persons.

(3) Adult foster homes, residential care facilities, assisted living facilities and nursing facilities that are not Medicaid certified shall maintain a record of such disclosure forms and shall make them available to the division or area agencies on aging upon request. [1989 c.912 §10]

410.520 When assessment to occur; exceptions. (1) Subject to subsection (2) of this section, admission screening shall occur:

(a) Before admission to an intermediate care facility; and

(b) Within seven days following the 30th day from admission to a skilled nursing facility.

(2) Subsection (1) of this section does not apply for the following:

(a) Patients transferred from one facility to another providing the same level of care;

(b) Patients who are returning to an intermediate care facility after having entered acute care facilities from such facilities;

(c) Patients who are being admitted to an intermediate care facility for less than 30 days. If a patient is admitted under this paragraph and is to remain in the facility for more than 30 days, the patient shall receive an assessment within seven days following the 30th day from admission;

(d) Patients who must be admitted immediately to a nursing facility. Patients admitted under this paragraph shall receive an assessment within seven days of admission;

(e) Patients who are entering a nursing home that is part of a continuing care retirement community; and

(f) Patients discharged from an acute care facility who opt to receive assessment services beyond the minimum federal criteria from the Senior and Disabled Services Division or an area agency on aging rather than from a certified program may receive these additional assessment services within seven days of admission. [1989 c.912 §4]

410.525 Disclosure of fees; waiver of assessment; additional assessment services. (1) If the admission assessment is performed by a certified program, the program shall disclose to the person receiving the assessment any portion of the fee that may be charged to that person, and shall inform the person of the right of the person to receive an assessment from the Senior and Disabled Services Division or an area agency on aging at no charge.

(2) The Senior and Disabled Services Division or area agencies on aging shall not charge any portion of the fee to the person receiving the assessment.

(3) Once the person or persons performing the assessment have met the minimum federal criteria, the person receiving the assessment shall have the option to receive additional assessment services and information regarding appropriate placement alternatives. The person shall sign a form to be developed by the division indicating the person's preference. [1989 c.912 §6]

410.530 Division authority; delegation; advisory committee. (1) The Senior and Disabled Services Division has the following authority which it may delegate to any program certified by the division to provide assessment services:

(a) To provide information and education to the general public, hospitals, nursing facilities and physicians regarding availability of the assessment program.

(b) To accept referrals from individuals, families, physicians, human service professionals, nursing home professionals, social service agencies or other organizations.

(c) To assess the long term care needs of referred persons.

(d) To identify available noninstitutional services to meet the needs of referred persons, including public and private case management services.

(e) To prepare, explain and document recommendations for persons receiving assessment program services as to the need for skilled nursing care, for intermediate care as provided in a facility or for other care which is available in the community.

(f) To inform referred persons of the extent to which home and community-based services are available, and of their right to choose among the appropriate alternatives that may be available, in consultation with an attending physician and a family member.

(g) To provide public education targeted at older persons, care givers and families regarding alternative long term care services.

(h) To determine and publish minimum qualifications for members of the admission assessment team.

(2)(a) After consultation with the committee appointed under subsection (3) of this section, the Senior and Disabled Services Division shall adopt by rule criteria and procedures for certifying and decertifying public or private admission assessment programs and contracting with certified programs. The division shall establish a maximum fee that a certified program may charge for assessment services. The rules shall specify that a certified program may not charge the person receiving assessment services for any portion

of the fee associated with the services necessary to meet the minimum federal criteria.

(b) In certifying a program, the division shall determine that the program includes:

(A) Adequately trained personnel;

(B) Information regarding appropriate service and placement alternatives, including nursing facilities and community-based options;

(C) Provisions to the applicant of information about appropriate options; and

(D) Prohibition of an assessment being provided by any certified program which has any financial interest in the facility to which placement is recommended.

(c) The program shall not require the recommendation of the admission team be binding and the applicant has the right to choose from any options that are available.

(3) The Assistant Director for Senior and Disabled Services shall appoint an advisory committee to advise the division in certifying and decertifying programs that provide or fail to provide the service described in this section. The assistant director shall appoint representatives from the Oregon Association of Hospitals, the Oregon Health Care Association, the Oregon Association of Homes for the Aging and representatives of organizations of seniors. [1989 c.912 §5; 1991 c.67 §104]

410.535 Rulemaking authority. The Senior and Disabled Services Division shall adopt rules to carry out the provisions of ORS 410.505 to 410.545, including, but not limited to:

(1) Granting exceptions to ORS 410.540; and

(2) Insuring confidentiality of all client information gathered during the admission assessment process. [1989 c.912 §8]

410.540 Compliance as condition for licensure. Compliance with the provisions of ORS 410.505 to 410.545 shall be a condition for licensure as a nursing facility. [1989 c.912 §7]

410.545 Implementation of ORS 410.505 to 410.545 requires federal funding. Implementation of ORS 410.505 to 410.545 is subject to federal fund participation of the admission assessment activities specified in ORS 410.510 to 410.530. [1989 c.912 §12]

REPORTING OF ABUSE OF ELDERLY PERSONS

410.610 Definitions for ORS 410.610 to 410.700. As used in ORS 410.610 to 410.700:

(1) "Abuse" means one or more of the following:

(a) Any physical injury caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect which leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury.

(2) "Division" means the Senior and Disabled Services Division of the Department of Human Resources.

(3) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(4) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(5) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor or podiatrist, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Resources, county health department or community mental health and developmental disabilities program.

(d) Peace officer.

(e) Clergyman.

(f) Licensed clinical social worker.

(g) Physical, speech or occupational therapists.

(h) Senior center employee.

(i) Information and referral or outreach worker.

(j) Any public official who comes in contact with elderly persons in the performance of the official's official duties. [1981 c.183 §1; 1987 c.428 §27; 1989 c.721 §50]

410.620 Policy. The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons. [1981 c.183 §2]

410.630 Duty of officials to report. Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact, while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused a person 65 years of age or older shall report or cause a report to be made in the manner required in ORS 410.640. [1981 c.183 §3]

410.640 Method of reporting; content; notice to law enforcement agency and to division. (1) When a report is required under ORS 410.630, an oral report shall be made immediately by telephone or otherwise to the local office of the division or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report is received by the division under ORS 410.630, the division may notify the law enforcement agency having jurisdiction within the county where the report was made. If the division is unable to gain access to the allegedly abused elderly person, the division may contact the law enforcement agency for assistance and the agency shall provide assistance. When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the division in the county where the report was made. [1981 c.183 §4; 1983 c.434 §3]

410.650 Duty to investigate; notice to division; evaluation. (1) Upon receipt of the report required under ORS 410.630, the division or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse.

(2) If the division or law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the division or law enforcement agency shall notify in writing the appropriate law enforcement agency or the local office of the division, respectively. The investigation shall include a visit to the named elderly person and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the evaluation of each case, written findings shall be prepared which shall include recommended action and a determination of whether protective services are needed. [1981 c.183 §5; 1983 c.434 §1; 1983 c.740 §139]

410.660 Immunity of person making report in good faith; identity confidential. (1) Anyone participating in good faith in the making of a report pursuant to ORS 410.610 to 410.650 and who has reasonable grounds for the making thereof, shall have immunity from any civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

(2) The identity of the person making the report shall be treated as confidential information and shall be disclosed only with the consent of that person or by judicial process, or as required to perform the functions under ORS 410.650. [1981 c.183 §6]

410.670 Photographing of victim; photograph as record. (1) In carrying out its duties under ORS 410.650 a law enforcement agency or the Senior and Disabled Services Division may photograph or cause to have photographed any victim who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of the investigation.

(2) For purposes of ORS 410.690, photographs taken under authority of subsection (1) of this section shall be considered records. [1981 c.183 §7; 1987 c.428 §28]

410.680 Catalogue of abuse records; confidentiality. A proper record of complaints made under ORS 410.630 and 410.640 shall be maintained by the Senior and Disabled Services Division. The division shall prepare reports in writing when investigation has shown that the condition of the elderly person was the result of abuse even if the cause remains unknown. The complaints and investigative reports shall be catalogued under the name of the victim but shall be treated as confidential information, and shall be disclosed only with the consent of that person or by judicial process. [1981 c.183 §8; 1985 c.651 §1]

410.690 Confidentiality of records; exceptions. Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public or private official who made the complaint, witnesses and the elderly persons compiled under the provisions of ORS 410.610 to 410.700 are confidential and are not accessible for public inspection. However, the division shall make the information and any investigative report available to any law en-

forcement agency, to any public agency which licenses or certifies residential facilities or licenses or certifies the persons practicing therein, to any public agency providing protective services for the elderly person, to the Mental Health and Developmental Disability Services Division and to the Long Term Care Ombudsman, if appropriate. The division shall also make the information and any investigative report available to any private nonprofit agency providing protective services for the elderly person. When this information and any investigative report is made available to the private agency, ORS 410.610 to 410.700 relating to confidentiality apply to the private agency. [1981 c.183 §9; 1983 c.434 §2; 1985 c.651 §2]

410.700 Treatment means not issue of abuse. An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered subjected to abuse by reason of neglect under ORS 410.610 to 410.700. [1981 c.183 §10]

STATE POLICY FOR DISABLED PERSONS AND SENIOR CITIZENS

410.710 State policy for disabled persons. (1) The Legislative Assembly finds and declares that it is a policy of this state that:

(a) All persons regardless of any disability have the right to live their lives with dignity and to participate in society and all state programs to the fullest extent possible.

(b) There is a need for education of state employees and the public generally about the capacity of persons with disabilities to participate and compete in the mainstream of society.

(c) Stereotypes and negative labels have no place in state laws and words such as "victim," "afflicted," "crippled" and "handicapped" that have connotations of unclean, unworthy, unproductive and begging are judgmental. Wherever possible, words such as these shall be avoided.

(d) The language of state laws shall reflect a positive outlook about persons with disabilities. The worth and uniqueness of each individual citizen is to be emphasized by using words and phrases which emphasize the person as an individual first and then identify any disability when relevant.

(2) Nothing in this Act is intended to extend entitlements, create or establish benefits or deny or limit benefits existing under state law prior to October 3, 1989. [1989 c.224 §1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 410.710. Chapter 224, Oregon Laws 1989, enacted into law and amended the ORS sections which may be found by referring to the Comparative Section Table located in volume 15 of Oregon Revised Statutes (1989 Replacement Parts).

410.715 Person suffering brain injury to be considered disabled person. It is the policy of the state that any person experiencing an injury defined as an injury to the brain caused by extrinsic forces where the injury results in the loss of cognitive, psychological, social, behavioral or physiological function for a sufficient time to affect that person's ability to perform activities of daily living shall be considered a person with disabilities. [1991 c.402 §1]

410.720 Policy on mental health services for senior citizens. (1) It is the policy of this state to provide for the mental health needs of all Oregon senior citizens through a comprehensive and coordinated statewide network of local senior mental health services and alcohol and drug abuse education and treatment. These services should involve family and friends and be provided in the least restrictive and most appropriate settings.

(2) In carrying out the provisions of subsection (1) of this section, the Department of Human Resources shall insure that the Senior and Disabled Services Division, in cooperation with the Mental Health and Developmental Disability Services Division and the office of Alcohol and Drug Abuse Programs, develop plans for service coordination, negotiate appropriate interagency agreements and recommend budget provisions for the delivery of needed services. [1991 c.775 §2]

MISCELLANEOUS

410.850 [1985 c.647 §2; repealed by 1987 c.523 §1 (410.851 enacted in lieu of 410.850)]

410.851 Policy on patient-based reimbursement system for long term care facilities. (1) The Legislative Assembly finds and declares that patients admitted to and cared for by long term care facilities in Oregon are more impaired than in the past. In keeping with the traditional commitment of the State of Oregon to the care and protection of its frail, elderly and handicapped citizens, as expressed in ORS 410.020 (1) to (6), the Legislative Assembly declares that a patient-based reimbursement system emphasizing quality incentives is appropriate for long term care facilities. Such a system would reward long term care facilities for outcomes, such as maintaining or improving a patient's condition, and meet the legitimate costs of caring for patients.

(2) "Patient-based reimbursement" means reimbursement for direct patient care according to the needs of the patient, based on multiple levels of patient health, functioning and impairment. Notwithstanding the above, patient-based reimbursement does not require the Senior and Disabled Services Division to assess each patient and reimburse long term care facilities according to the constantly changing conditions of the patients except for changes between skilled and intermediate levels of care which shall result in prompt readjustment of rates.

(3) The Senior and Disabled Services Division shall establish by rule definitions of levels of care and the payment rates for the patient-based reimbursement system. [1987 c.523 §2 (enacted in lieu of 410.850)]

CIVIL PENALTY

410.890 Civil penalty. Violation of ORS 410.520 shall be subject to a civil penalty of not to exceed $5,000, imposed in the manner provided in ORS 441.705 to 441.745. [1989 c.912 §9; 1991 c.67 §105]

CRIMINAL PENALTY

410.990 Criminal penalty. A person who violates ORS 410.630 commits a violation punishable by a fine of $500. [1981 c.183 §12]