

# Chapter 443

1991 EDITION

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**HOME HEALTH AGENCIES**

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

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

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

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

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

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

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

**443.010** [Amended by 1963 c.164 §1; repealed by 1969 c.641 §19]

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

**443.020** [Amended by 1957 c.697 §4; 1961 c.316 §10; 1967 c.89 §6; repealed by 1969 c.641 §19]

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

**443.030** [Repealed by 1969 c.641 §19]

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

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

**443.040** [Repealed by 1969 c.641 §19]

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

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

**443.050** [Repealed by 1969 c.641 §19]

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

**443.060** [Amended by 1963 c.164 §2; repealed by 1969 c.641 §19]

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

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

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

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

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

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

**443.075 Physician required to plan and review certain treatment.** The following services and supplies may be prescribed by a physician in accordance with a plan of

treatment which must be established and periodically reviewed by the physician:

- (1) Home nursing care provided by or under the supervision of a registered nurse;
- (2) Physical, occupational or speech therapy, medical social services or other therapeutic services;
- (3) Home health aide services; and
- (4) Medical supplies, other than drugs and biologicals, and the use of medical appliances. [1977 c.738 §5; 1981 c.415 §3]

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

- (1) The qualifications of professional and ancillary personnel in order to adequately furnish home health services;
- (2) Standards for the organization and quality of patient care;
- (3) Procedures for maintaining records; and
- (4) Provision for contractual arrangements for professional and ancillary health services. [1977 c.738 §6]

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

### 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 AND HOMES

**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 Mental Health and Developmental Disability Services Division or the Senior and Disabled Services Division or the office of Alcohol and Drug Abuse Programs, as appropriate.

(2) "Director" means the Assistant Director for Mental Health and Developmental Disability Services Division, the Assistant Director for Senior and Disabled Services or the Assistant Director for Alcohol and Drug Abuse Programs, as appropriate.

(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, 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 disabled 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 individuals, 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 and Developmental Disability Services Division.

(9) "Residential treatment facility" means a facility that provides, for six or more mentally, emotionally or behaviorally disturbed individuals or alcohol or drug dependent persons, 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 or alcohol or drug dependent persons, 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, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem. [1977 c.717 §1; 1987 c.548 §1; 1989 c.224 §95; 1989 c.488 §1; 1991 c.801 §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 for persons who are developmentally dis-

abled, physically disabled or socially dependent, psychiatrically disabled or alcohol or drug dependent. 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; 1989 c.224 §96; 1989 c.488 §2; 1991 c.801 §2]

**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]

**443.422 Siting of licensed residential facilities.** (1) To prevent the perpetuation of segregated housing patterns, the Department of Human Resources shall determine the location and type of licensed residential facilities and the location of facilities subject to the provisions of ORS 169.690.

(2) Before a license is issued for a residential facility as defined in ORS 443.400, the issuing agency shall determine the number and type of any other licensed residential facilities and the number and type of facilities subject to the provisions of ORS 169.690 within a 1,200 foot radius.

(3) None of the data collected under this section shall be used in a manner that violates the Fair Housing Amendments Act of 1988. [1989 c.564 §11]

**Note:** 443.422 was added to and made a part of ORS chapter 443 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**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 noncompliance 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 and homes; transfer of persons requiring certain treatment; operation of facilities by persons relying on spiritual means for healing.** (1) No residential facility or home shall admit individuals who require continuous nursing care except as provided in subsection (3) of this section.

(2) Except as provided in subsection (3) of this section, if any resident of a residential facility or home requires nursing care for eight or more consecutive days or a physician or the designee of a physician or a 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) A resident of a residential facility or home who requires nursing care in addition to training, treatment or care needs, or any combination thereof, may be served by that facility or home with approval from the Mental Health and Developmental Disability Services Division or the Senior and Disabled Services Division and in accordance with the rules of those divisions and consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

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

(5) In the case of residential facilities or homes 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 proce-

dures shall be required. [1977 c.717 §5; 1991 c.292 §2]

**443.450 Rules.** (1) The director 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 homes of five or fewer residents, 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; 1991 c.801 §3]

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

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

(b) No more than five physically disabled 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; 1989 c.224 §97]

**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 Assistant Director for the Senior and Disabled Services Division, the Assistant Director for the Mental Health and Developmental Disability Services Division or the Assistant Director for Alcohol and Drug Abuse Programs shall exercise the powers conferred under ORS 441.705 to 441.745. The director 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; 1991 c.801 §4]

**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]

### REGISTERED RESIDENTIAL FACILITIES

**443.480 Definitions for ORS 443.480 to 443.500.** As used in ORS 443.480 to 443.500:

(1) "Elderly" means an individual who is 62 years of age or older.

(2) "Disabled" 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. [1989 c.581 §5]

**Note:** 443.480 to 443.500 were enacted into law by the Legislative Assembly but were 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.

**443.485 Registration required; fee; rules; civil penalty; grounds for suspension or revocation of registration.** (1) Subject to ORS 443.490, any person who offers to the general public residential facilities and meals for compensation to two or more adults who are elderly or disabled, as defined in ORS 443.480, not related to the person by blood or marriage, and is not licensed or registered under any other law of this state or city or county ordinance or regulation shall register the person's name and address with the Senior and Disabled Services Division. The registration fee is \$20 annually. The division shall establish by rule reasonable and appropriate standards for the operation of facilities subject to ORS 443.480 to 443.500, consistent with their residential nature.

(2) The Senior and Disabled Services Division shall provide evidence of the registration to the person. The evidence shall be posted in the residence.

(3) The Senior and Disabled Services Division may impose a civil penalty not to exceed \$200 for:

(a) Operating without registration as required under this section; or

(b) A violation of ORS 443.880 or 443.881.

(4) The division may suspend or revoke registration or deny the issuance of registration for violation of any statute, rule, ordinance or regulation relating to the safety of occupants of the residential facility. [1989 c.581 §1; 1991 c.413 §5]

**443.490 Waiver of registration.** Any county or city that requires registration or licensure in the manner described in ORS 443.485, whether or not a fee is required, may request a waiver of the requirements of ORS 443.485. If the Senior and Disabled Services Division finds that the county or city registration or licensure requirement is substantially similar or superior, it may waive the requirements of ORS 443.485. [1989 c.581 §2]

**443.495 Exemptions.** Nothing in ORS 443.480 to 443.500 applies to:

(1) Any facility operated by an institution of higher education.

(2) Any private room and board facility approved by an institution of higher education which has as a resident a student or an employee of the institution.

(3) Any private or nonprofit retirement facility which does not fall under the generally understood definition of a "room and board facility," a "boarding house" or a "boarding hotel" and where a majority of the residents are retirees.

(4) Any privately arranged housing the occupants of which may not be related by blood or marriage. [1989 c.581 §3]

**443.500 Investigation of registered facilities; access to facilities.** (1) The Senior and Disabled Services Division staff shall be permitted access to enter and investigate complaints of abuse in all facilities registered under ORS 443.480 to 443.500 for purposes of ascertaining compliance with applicable rules, statutes, ordinances and regulations. If the division has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, it may apply to the district or circuit court for a search warrant.

(2) Upon complaint of any person:

(a) The state or local fire inspectors shall be permitted access to enter and inspect facilities registered under ORS 443.480 to 443.500 regarding fire safety.

(b) The state or local health officers shall be permitted access to enter and inspect facilities registered under ORS 443.480 to 443.500 regarding health and sanitation. [1989 c.581 §4]

**443.510** [1981 c.427 §1; 1989 c.224 §98; repealed by 1989 c.564 §12]

**443.520** [1981 c.427 §2; 1989 c.224 §99; repealed by 1989 c.564 §12]

**443.530** [1981 c.427 §3; repealed by 1989 c.564 §12]

**443.540** [1981 c.427 §4; repealed by 1989 c.564 §12]

**443.550** [1981 c.427 §5; repealed by 1989 c.564 §12]

**443.580** [1983 c.293 §1; 1989 c.224 §100; repealed by 1989 c.564 §12]

**443.590** [1983 c.293 §2; 1989 c.224 §101; repealed by 1989 c.564 §12]

**443.600** [1983 c.293 §3; 1985 c.544 §1; repealed by 1989 c.564 §12]

**443.610** [1987 c.351 §1; 1989 c.224 §102; repealed by 1989 c.564 §12]

**443.620** [1987 c.351 §2; repealed by 1989 c.564 §12]

**443.630** [1987 c.351 §3; repealed by 1989 c.564 §12]

**443.640** [1987 c.351 §4; repealed by 1989 c.564 §12]

## 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 and Disabled Services Division or the Mental Health and Developmental Disability Services 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 and includes a certified resident manager.

(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.

(7) "Substitute caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Senior and Disabled Services Division in the absence of the provider or certified resident manager. [1983 c.629 §1; 1985 c.663 §1; 1987 c.430 §1; 1991 c.960 §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 disabled persons where the Senior and Disabled Services Division provides payment for personal care services other than to an adult foster home provider.

(3) Any residential facility, as defined in ORS 443.400, licensed and funded by the Mental Health and Developmental Disability Services Division or by the office of Alcohol and Drug Abuse Programs.

(4) Any residential treatment home, as defined in ORS 443.400, licensed and funded by the Mental Health and Developmental Disability Services Division or by the office of Alcohol and Drug Abuse Programs. [1983 c.629 §2; 1985 c.663 §2; 1989 c.224 §103; 1991 c.801 §5]

**443.725 License required; resident manager required; when other resident staff 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.

(3) There must be a provider, certified resident manager or substitute caregiver on duty 24 hours per day in an adult foster home under the jurisdiction of the Senior and Disabled Services Division. [1983 c.629 §3; 1985 c.663 §3; 1991 c.960 §4]

**443.735 Issuance of license; inspection; staff; 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. No license shall be issued or renewed prior to the completion of an inspection.

(3) Persons who have been convicted of one or more crimes which, as determined by rules of the department, are substantially related to the qualifications, functions or duties of a provider, certified resident manager, substitute caregiver or other household member in an adult foster home shall be prohibited from operating, working in or residing in an adult foster home.

(4) 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.

(5) 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.

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

(7) 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; 1991 c.960 §5]

**443.738 Educational standards for providers, managers and caregivers; duties of providers.** (1) Except as provided in subsection (2) of this section, all providers, certified resident managers and substitute caregivers for adult foster homes under the jurisdiction of the Senior and Disabled Services Division shall satisfactorily meet all educational requirements established by the division. After consultation with representatives of providers, residents' advocates and the Long Term Care Ombudsman, the division shall adopt by rule standards governing the educational requirements. The rules shall require that no person may provide care to any resident prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety and welfare of the resident. Each provider shall document compliance with the educational requirements for persons subject thereto.

(2) After consultation with representatives of providers, residents' advocates and the Long Term Care Ombudsman, the division may adopt by rule exceptions to the requirements of subsection (1) of this section for persons who are appropriately licensed medical care professionals in Oregon or who possess sufficient education, training or experience to warrant an exception.

(3) Providers shall serve three nutritionally balanced meals to residents each

day. A menu for the meals for the coming week shall be prepared and posted weekly.

(4) Providers shall make available at least six hours of activities each week which are of interest to the residents, not including television or movies.

(5) Providers shall give at least 30 days' written notice to the residents, and to the legal representative, guardian or conservator of any resident, before selling, leasing or transferring the adult foster home business or the real property on which the adult foster home is located.

(6) If a resident dies, or leaves an adult foster home for medical reasons and indicates in writing the intent to not return, the provider shall not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the resident has left the adult foster home. The provider has an affirmative duty to take reasonable actions to mitigate the damages by accepting a new resident. However, if a resident dies or leaves an adult foster home due to neglect or abuse by the provider or due to conditions of imminent danger to life, health or safety, the provider shall not charge the resident beyond the resident's last day in the home. The provider shall refund any advance payments within 30 days after the resident dies or leaves the adult foster home.

(7) Chemical and physical restraints may be used only after considering all other alternatives and only when required to treat a resident's medical symptoms or to insure the physical safety of any resident. Restraints may not be used for discipline of a resident or for the convenience of the adult foster home. Restraints may be used only:

(a) Pursuant to a physician's order that specifies the type, circumstances and duration of the restraint and a delegation under the rules of the Oregon State Board of Nursing; or

(b) Pursuant to the direction of a practitioner who is of a belief that prohibits use of chemical restraints.

(8) Providers shall not place residents who are unable to walk without assistance in a basement, split-level, second story or other area that does not have an exit at ground level. Nonambulatory residents shall be given first floor rooms.

(9) The provider shall not transfer or discharge a resident from an adult foster home unless the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the welfare of other residents, or due to nonpayment. In such cases, the provider shall give the resi-

dent written notice as soon as possible under the circumstances.

(a) The provider shall give the resident and the resident's legal representative, guardian or conservator written notice at least 30 days prior to the proposed transfer or discharge, except in a medical emergency including but not limited to a resident's experiencing an increase in level of care needs or engaging in behavior that poses an imminent danger to self or others. In such cases, the provider shall give the resident written notice as soon as possible under the circumstances.

(b) The resident shall have the right to an administrative hearing prior to an involuntary transfer or discharge. If the resident is being transferred or discharged for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the transfer or discharge. The provider shall hold a space available for the resident pending receipt of an administrative order. ORS 441.605 (4) and the rules thereunder governing transfer notices and hearings for residents of long term care facilities shall apply to adult foster homes. [1991 c.960 §3]

**443.739 Rights of residents.** Residents of adult foster homes under the jurisdiction of the Senior and Disabled Services Division have the following rights. Providers shall guarantee these rights and help residents exercise them. The provider shall post a copy of the Residents' Bill of Rights in the entry or other equally prominent place in the adult foster home. The Residents' Bill of Rights states that each resident of an adult foster home has the right to:

(1) Be treated as an adult, with respect and dignity.

(2) Be informed of all resident rights and all house rules.

(3) Be encouraged and assisted to exercise legal rights, including the right to vote.

(4) Be informed of the resident's medical condition and the right to consent to or refuse treatment.

(5) Receive appropriate care and services, and prompt medical care as needed.

(6) A safe and secure environment.

(7) Be free from mental and physical abuse.

(8) Be free from chemical or physical restraints except as ordered by a physician or a practitioner who is of a belief that prohibits use of chemical restraints.

(9) Complete privacy when receiving treatment or personal care.

(10) Associate and communicate privately with any person the resident chooses.

(11) Send and receive personal mail unopened.

(12) Participate in activities of social, religious and community groups.

(13) Have medical and personal information kept confidential.

(14) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(15) Manage the resident's own money and financial affairs unless legally restricted.

(16) Be free from financial exploitation. The provider shall not solicit, accept or receive money or property from a resident other than the amount agreed to for services.

(17) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home.

(18) Not to be transferred or moved out of the home without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge a resident only for medical reasons including a medical emergency described in ORS 443.738 (9)(a), or for the welfare of the resident or other residents, or for nonpayment.

(19) Be free of discrimination in regard to race, color, national origin, sex or religion.

(20) Make suggestions and complaints without fear of retaliation. [1991 c.960 §11]

**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; inspection report; 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.

(3)(a) The Senior and Disabled Services Division shall provide to each licensed adult foster home in the state in writing in clear concise language readily comprehensible by the average person a copy of the inspection report of the most recent inspection of that home conducted by the division.

(b) The provider shall post the inspection report in the entry or equally prominent place and shall, upon request, provide a copy of the information to each resident of, or person applying for admission to, the home, or the legal representative, guardian or conservator of the resident or applicant. [1983 c.629 §6; 1985 c.663 §6; 1991 c.960 §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 and shall adopt by rule standards governing investigations pursuant to this section.

(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 employee 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 employee, 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; 1991 c.960 §7]

**443.767 Investigation of complaint; rules.** (1) When the Senior and Disabled Services Division receives a complaint that alleges that a resident has been injured,

abused or neglected, and that any resident's health or safety is in imminent danger, or that the resident has died or been hospitalized, the investigation shall begin immediately after the complaint is received. If the investigator determines that the complaint is substantiated, the division shall take appropriate corrective action immediately.

(2) When the Senior and Disabled Services Division receives a complaint that alleges the existence of any circumstance that could result in injury, abuse or neglect of a resident, and that the circumstance could place the resident's health or safety in imminent danger, the division shall investigate the complaint promptly. If the investigator determines that the complaint is substantiated, the division shall take appropriate corrective action promptly.

(3) After public hearing, the Senior and Disabled Services Division shall by rule set standards for the procedure, content and time limits for the initiation and completion of investigations of complaints. The time limits shall be as short as possible and shall vary in accordance with the severity of the circumstances alleged in the complaint. In no event shall the investigation exceed a duration of 60 days, unless there is an ongoing concurrent criminal investigation, in which case the department may take a reasonable amount of additional time in which to complete the investigation.

(4) The Senior and Disabled Services Division shall take no longer than 60 days from the completion of the investigation report to take appropriate corrective action in the case of any complaint that the investigator determines to be substantiated.

(5)(a) The Senior and Disabled Services Division shall cause a copy of the investigation report to be mailed within seven days of the completion of the report to:

(A) The complainant, unless the complainant requests anonymity;

(B) The resident, and any person designated by the resident to receive information concerning the resident;

(C) The facility; and

(D) The Long Term Care Ombudsman.

(b) The copy of the report shall be accompanied by a notice that informs the recipient of the right to submit additional evidence.

(6) The complaint and the investigation report shall be available to the public at the local Senior and Disabled Services Division office or the type B area agency on aging, if appropriate.

(7) A copy of the report shall be forwarded to the central office of the division,

whether or not the investigation report concludes that the complaint is substantiated. [1991 c.960 §8]

**443.775 Rulemaking; compliance; exception to limit on residents with nursing care needs; reports on exceptions; 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).

(a) An exception to the limit of one resident with nursing care needs may be granted if the provider proves to the department by clear and convincing evidence that such an exception will not jeopardize the care, health, safety or welfare of the residents and that the provider is capable of meeting the additional care needs of the new resident.

(b) The department, and the counties acting under the exemption granted pursuant to ORS 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions granted during the quarter pursuant to paragraph (a) of this subsection.

(2) The department shall make rules to assure that any employee 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 and Disabled Services Division and Mental Health and Developmental Disability Services 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 subjected to the imposition of a civil penalty, to be fixed by the director by rule, not to exceed \$100 per violation, to a maximum of \$250 or, per occurrence of substantiated abuse, a maximum of \$1,000. [1983 c.629 §8; 1985 c.663 §7; 1987 c.369 §2; 1987 c.430 §2; 1987 c.431 §2; 1991 c.960 §9]

**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) The director shall impose a civil penalty of not to exceed \$500 on any adult foster home for falsifying resident or facility records or causing another to do so.

(3)(a) In every case other than those involving the health, safety or welfare of a resident, the director shall prescribe a reasonable time for elimination of a violation but except as provided in paragraph (b) of this subsection shall not prescribe a period to exceed 30 days after notice of the violation.

(b) The director may approve a reasonable amount of time in excess of 30 days if correction of the violation within 30 days is determined to be impossible.

(4) 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 or threatened the health, safety or welfare of one or more residents. [1987 c.431 §§4, 6; 1991 c.413 §6; 1991 c.960 §10]

#### **443.795 Civil penalty; notice; hearing.**

(1) Any civil penalty under ORS 443.790 shall be imposed as provided in ORS 183.090.

(2) Notwithstanding ORS 183.090, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the director.

(3) The department shall conduct the hearing and issue the final order within 180 days after any hearing request made after September 29, 1991. [1987 c.431 §5; 1991 c.734 §25; 1991 c.960 §12]

443.805 [1987 c.431 §7; repealed by 1991 c.734 §122]

#### **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, occupational 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; 1989 c.697 §3]

#### **443.860 Certification or accreditation required; exception.**

(1) Except as provided in subsections (3) and (4) of this section, 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 Medicare as a program of hospice services meeting standards for Medicare reimbursement;

(b) Accreditation by the Oregon Hospice Association; or

(c) Accreditation by the Joint Commission on Accreditation of Health Care Organizations as a hospice program.

(2) The Oregon Hospice Association may accredit hospices which are not members of the Oregon Hospice Association.

(3) 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.

(4) Any person may operate a hospice program for a period of not more than 90 consecutive days if Medicare, the Joint Commission on Accreditation of Health Care Organizations or the Oregon Hospice Association acknowledges in writing that accreditation or certification is pending.

(5) A certified or accredited hospice need not obtain a license pursuant to ORS 443.015 unless it meets the definition of a home health agency and receives direct compensation for home health care services from the patient, insurers, Medicare or Medicaid.

Compensation paid to licensed professionals is not direct compensation. [1987 c.398 §§2, 3; 1989 c.697 §1]

**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]

### PROPERTY OF RESIDENTS

**443.880 Responsibilities of residential facility regarding property of resident.** (1) The admission of a person to a residential facility shall not act to create in the facility, its owner, administrator or employee any authority to manage, use or dispose of any property of the resident, or any authority or responsibility for the personal affairs of the person, except as may be necessary for the safety and orderly management of the facility and as may be required by this section.

(2) No owner, administrator or employee of a residential facility may act as guardian, conservator, trustee or attorney in fact for any resident of the facility unless the resident is related to the owner, administrator or employee within the third degree of consanguinity. This subsection shall not prevent the owner, administrator or employee of a residential facility to act as a representative payee for the resident.

(3) A residential facility shall provide for the safekeeping of personal effects, funds and other property of its residents.

(4) A residential facility shall keep complete and accurate records of all funds and other property of its residents received by the facility for safekeeping.

(5) Any funds or other property belonging to or due to a resident of a residential facility which are received by a residential facility shall be held in trust and shall be held separate from the funds and property of the facility and shall be used only for the account of the resident. Upon request, the facility shall furnish the resident a complete and certified statement of all funds or other property to which this section applies, detailing the amounts and items received, together with their sources and disposition.

(6) For the purposes of this section, "residential facility" means a domiciliary care facility as defined by ORS 443.205, a long term care facility as defined by ORS 442.015, a residential facility as defined by ORS 443.400, an adult foster home as defined by ORS 443.705 and any residential facility required to be registered under ORS 443.480 to 443.500. [1991 c.413 §1]

**443.881 Transfer of property; undue influence.** (1) No owner, employee or ad-

ministrators of a residential facility as defined by ORS 443.880 shall cause any person who is a resident of the facility to deliver to the owner, employee or administrator any funds or property of the resident by the exercise of undue influence.

(2) For the purposes of this section, "undue influence" means that an owner, employee or administrator of a residential facility has substituted the will or interests of the owner, employee or administrator for the will or interests of the resident of the facility. [1991 c.413 §2]

### ALZHEIMER'S DISEASE

**443.885 Registration of certain facilities.** On and after October 1, 1991, any facility that provides care for patients or residents with Alzheimer's disease or other dementia by means of an Alzheimer's care unit must register with the Senior and Disabled Services Division. [1991 c.416 §1]

**443.886 Special indorsement required; standards; fees; rules.** (1) On and after June 1, 1993, whenever any facility intends to provide care for patients or residents with Alzheimer's disease or other dementia by means of an Alzheimer's care unit, the facility must obtain a special indorsement on its license or registration.

(2) The Department of Human Resources, acting through the Senior and Disabled Services Division with the input from representatives of advocate groups and the long term care industry, shall adopt by rule standards that assure that the special needs of any Alzheimer's patient or resident who is cared for in a special unit are met and that quality care is provided. The standards must include but are not limited to provisions for:

(a) Care planning, including physical design, staffing, staff training, safety, egress control, individual care planning, admission policy, family involvement, therapeutic activities and social services;

(b) Continuity of basic care requirements; and

(c) Marketing and advertising of the availability of and services from Alzheimer's care units.

(3) The department shall adopt a fee schedule for indorsement, taking into account the type of facility and the number of patients and residents.

(4) The department or division shall enforce rules adopted under subsection (2) of this section and shall allow a licensee or registrant to retain the special indorsement required to care for patients and residents with Alzheimer's disease or other dementia

only so long as the licensee or registrant complies with the rules.

(5) The special indorsement may be suspended or revoked in the same manner as the license or registration is suspended or revoked.

(6) Unless a facility has obtained the indorsement required by subsection (1) of this section, the facility shall not:

(a) Advertise the facility as providing an Alzheimer's care unit; or

(b) Market the facility as providing an Alzheimer's care unit.

(7) As used in this section:

(a) "Alzheimer's care unit" means a special care unit in a designated, separated area for patients and residents with Alzheimer's disease or other dementia that is locked, segregated or secured to prevent or limit access by a patient or resident outside the designated or separated area.

(b) "Facility" means a nursing home, residential care facility, assisted living facility or any other like facility required to be licensed by the Senior and Disabled Services Division.

(c) "Registry" means a facility will provide the Senior and Disabled Services Division with information relating to the Alzheimer's care unit including the number of residents in the unit, stage of dementia for each resident, description of how services are provided, and length of time the unit has been operating. [1991 c.416 §2]

Note: Section 3, chapter 416, Oregon Laws 1991, provides:

Sec. 3. The Senior and Disabled Services Division shall adopt the final draft of rules required by section

2 of this Act [443.886] prior to June 1, 1993. [1991 c.416 §3]

### PENALTIES

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

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

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

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

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

(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.

(5) Violation of ORS 443.881 is punishable as a Class C misdemeanor. [Subsection (1) enacted as 1977 c.738 §11; subsection (2) enacted as 1977 c.717 §14; 1979 c.284 §144; 1985 c.663 §8; subsection (5) enacted as 1991 c.413 §3]

