

Enrolled House Bill 2009

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CHAPTER

AN ACT

Relating to health care; creating new provisions; amending ORS 25.323, 65.800, 87.533, 90.113, 90.440, 92.337, 93.270, 97.210, 97.450, 97.977, 105.580, 106.045, 106.081, 109.094, 109.096, 109.225, 109.251, 109.675, 109.680, 109.685, 109.695, 110.318, 113.085, 113.105, 113.145, 114.525, 114.535, 115.125, 116.093, 116.253, 124.050, 125.060, 127.646, 127.720, 127.865, 130.370, 130.425, 135.139, 135.917, 137.227, 137.228, 137.464, 137.466, 137.658, 144.102, 144.270, 161.315, 161.327, 161.336, 161.341, 161.346, 161.365, 161.370, 161.375, 161.385, 161.390, 163.206, 165.698, 166.250, 166.291, 166.412, 166.470, 169.076, 169.690, 179.010, 179.040, 179.050, 179.055, 179.065, 179.105, 179.110, 179.140, 179.150, 179.210, 179.230, 179.240, 179.321, 179.325, 179.331, 179.360, 179.370, 179.375, 179.380, 179.385, 179.390, 179.450, 179.460, 179.473, 179.479, 179.490, 179.492, 179.505, 179.509, 179.610, 179.620, 179.640, 179.653, 179.655, 179.660, 179.701, 179.711, 179.731, 179.740, 179.745, 179.770, 181.537, 181.637, 182.415, 182.515, 182.535, 184.345, 192.517, 192.519, 192.527, 192.535, 192.537, 192.539, 192.547, 192.549, 192.630, 197.660, 198.792, 199.461, 199.490, 199.495, 199.512, 222.120, 222.850, 222.860, 222.870, 222.875, 222.880, 222.883, 222.885, 222.890, 222.897, 222.900, 222.911, 244.050, 247.570, 276.180, 276.610, 276.612, 278.315, 279A.050, 285A.213, 285B.563, 291.371, 314.840, 315.604, 315.613, 320.308, 323.455, 323.625, 332.111, 336.222, 336.227, 336.235, 336.245, 339.333, 339.505, 339.869, 343.221, 343.499, 343.961, 345.535, 346.015, 346.035, 348.320, 351.105, 352.008, 401.259, 401.300, 401.347, 401.654, 401.657, 401.661, 401.667, 401.670, 401.871, 408.305, 408.310, 408.320, 408.325, 408.380, 408.570, 408.580, 409.010, 409.320, 409.330, 409.410, 409.420, 409.425, 409.430, 409.435, 409.500, 409.520, 409.530, 409.540, 409.600, 409.619, 409.621, 409.623, 409.625, 409.720, 409.740, 409.745, 409.747, 411.620, 411.708, 414.025, 414.033, 414.034, 414.042, 414.049, 414.051, 414.065, 414.073, 414.105, 414.106, 414.109, 414.115, 414.125, 414.135, 414.145, 414.151, 414.153, 414.211, 414.221, 414.225, 414.227, 414.312, 414.314, 414.316, 414.318, 414.320, 414.325, 414.327, 414.329, 414.330, 414.332, 414.334, 414.336, 414.338, 414.350, 414.355, 414.360, 414.365, 414.375, 414.380, 414.390, 414.410, 414.420, 414.426, 414.428, 414.534, 414.536, 414.538, 414.540, 414.630, 414.640, 414.707, 414.708, 414.709, 414.710, 414.712, 414.720, 414.725, 414.727, 414.728, 414.735, 414.736, 414.737, 414.738, 414.739, 414.740, 414.741, 414.742, 414.743, 414.750, 414.751, 414.805, 414.807, 414.815, 414.839, 416.430, 416.510, 416.530, 416.540, 416.550, 416.560, 416.570, 416.580, 416.590, 416.600, 416.610, 416.990, 417.346, 417.728, 417.730, 417.735, 417.795, 417.845, 418.704, 418.706, 419B.005, 419B.839, 419C.239, 419C.443, 419C.507, 419C.529, 419C.530, 419C.532, 419C.533, 419C.538, 419C.542, 420.505, 420.870, 420A.135, 420A.145, 420A.155, 421.504, 426.005, 426.010, 426.020, 426.060, 426.070, 426.072, 426.074, 426.075, 426.095, 426.110, 426.120, 426.127, 426.130, 426.140, 426.150, 426.170, 426.180, 426.217, 426.220, 426.223, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234, 426.235, 426.236, 426.237, 426.238, 426.241, 426.250, 426.273, 426.275, 426.278, 426.292, 426.300, 426.301, 426.303, 426.307, 426.330, 426.335, 426.370, 426.385, 426.395, 426.415, 426.495, 426.500, 426.502, 426.504, 426.506, 426.508, 426.650, 426.670, 426.675, 426.680,

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Be It Enacted by the People of the State of Oregon:

HEALTH AUTHORITY LAW

ESTABLISHING OREGON HEALTH POLICY BOARD

(Establishment; Appointment; Term; Confirmation; Per Diem)

SECTION 1. (1) There is established the Oregon Health Policy Board, consisting of nine members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of the board is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) Members of the board are entitled to reimbursement of per diem and travel expenses for their attendance at board meetings and subcommittee meetings as provided in ORS 292.495.

SECTION 2. Notwithstanding the term of office specified by section 1 of this 2009 Act, of the members first appointed to the Oregon Health Policy Board:

(1) Two shall serve for terms ending December 31, 2011.

(2) Two shall serve for terms ending December 31, 2012.

(3) Two shall serve for terms ending December 31, 2013.

(4) Three shall serve for terms ending December 31, 2014.

NOTE: Section 3 was deleted by amendment. Subsequent sections were not renumbered.

(Qualification of Members)

SECTION 4. (1) The Oregon Health Policy Board consists of individuals who:

(a) Are United States citizens and residents of this state;

(b) Have demonstrated leadership skills in their professional and civic lives;

(c) To the greatest extent practicable, represent the various geographic, ethnic, gender, racial and economic diversity of this state; and

(d) Collectively offer expertise, knowledge and experience in consumer advocacy, management of a company that offers health insurance to its employees, public health, finance, organized labor, health care and the operation of a small business.

(2) No more than four members of the board may be individuals:

(a) Whose household incomes, during the individuals' tenure on the board or during the 12-month period prior to the individuals' appointment to the board, come from health care or from a health care related field; or

(b) Who receive health care benefits from a publicly funded state health benefit plan.

(3) No more than four members of the board may be, during the individuals' tenure on the board or during the 12-month period prior to the individuals' appointment to the board, employed in a health care or health care related field.

(4) At least one member of the board shall have an active license to provide health care in Oregon and shall be appointed to serve in addition to the members offering the expertise, knowledge and experience described in subsection (1)(d) of this section.

(Officers; Quorum; Meetings)

SECTION 5. (1) The Governor shall select from the membership of the Oregon Health Policy Board the chairperson and vice chairperson.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at least once every month and shall meet at least once every two years in each congressional district in this state, at a place, day and hour determined by the board. The board may also meet at other times and places specified by the call of the chairperson or a majority of the members of the board, or as specified in bylaws adopted by the board.

(Authority to Adopt Rules)

SECTION 6. In accordance with applicable provisions of ORS chapter 183, the Oregon Health Policy Board may adopt rules necessary for the administration of the laws that the board is charged with administering.

(Committees)

SECTION 7. (1) The Oregon Health Policy Board shall establish the committees described in subsections (2) and (3) of this section.

(2)(a) The Public Health Benefit Purchasers Committee shall include individuals who purchase health care for the following:

(A) The Public Employees' Benefit Board.

(B) The Oregon Educators Benefit Board.

(C) Trustees of the Public Employees Retirement System.

- (D) A city government.
- (E) A county government.
- (F) A special district.

(G) Any private nonprofit organization that receives the majority of its funding from the state and requests to participate on the committee.

(b) The Public Health Benefit Purchasers Committee shall:

(A) Identify and make specific recommendations to achieve uniformity across all public health benefit plan designs based on the best available clinical evidence, recognized best practices for health promotion and disease management, demonstrated cost-effectiveness and shared demographics among the enrollees within the pools covered by the benefit plans.

(B) Develop an action plan for ongoing collaboration to implement the benefit design alignment described in subparagraph (A) of this paragraph and shall leverage purchasing to achieve benefit uniformity if practicable.

(C) Continuously review and report to the Oregon Health Policy Board on the committee's progress in aligning benefits while minimizing the cost shift to individual purchasers of insurance without shifting costs to the private sector or the Oregon Health Insurance Exchange.

(c) The Oregon Health Policy Board shall work with the Public Health Benefit Purchasers Committee to identify uniform provisions for state and local public contracts for health benefit plans that achieve maximum quality and cost outcomes. The board shall collaborate with the committee to develop steps to implement joint contract provisions. The committee shall identify a schedule for the implementation of contract changes. The process for implementation of joint contract provisions must include a review process to protect against unintended cost shifts to enrollees or agencies.

(d) Proposals and plans developed in accordance with this subsection shall be completed by October 1, 2010, and shall be submitted to the Oregon Health Policy Board for its approval and possible referral to the Legislative Assembly no later than December 31, 2010.

(3)(a) The Health Care Workforce Committee shall include individuals who have the collective expertise, knowledge and experience in a broad range of health professions, health care education and health care workforce development initiatives.

(b) The Health Care Workforce Committee shall coordinate efforts to recruit and educate health care professionals and retain a quality workforce to meet the demand that will be created by the expansion in health care coverage, system transformations and an increasingly diverse population.

(c) The Health Care Workforce Committee shall conduct an inventory of all grants and other state resources available for addressing the need to expand the health care workforce to meet the needs of Oregonians for health care.

(4) Members of the committees described in subsections (2) and (3) of this section who are not members of the Oregon Health Policy Board are not entitled to compensation but shall be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by them by their attendance at committee meetings, in the manner and amount provided in ORS 292.495.

SECTION 7a. There is established in the State Treasury, separate and distinct from the General Fund, the Health Care Workforce Strategic Fund. The fund shall consist of moneys obtained from federal and private sources as well as any moneys appropriated to the fund by the Legislative Assembly. Moneys in the fund are continuously appropriated to the Oregon Health Authority to meet the goals established by the Health Care Workforce Committee established pursuant to section 7 of this 2009 Act.

(Advisory and Technical Committees)

SECTION 8. (1) The Oregon Health Policy Board may establish such advisory and technical committees as the board considers necessary to aid and advise the board in the performance of the board's functions. These committees may be continuing or temporary committees. The board shall determine the representation, membership, terms and organization of the committees and shall appoint the members of the committees.

(2) Members of the committees who are not members of the board are not entitled to compensation, but at the discretion of the board may be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

(Duties)

SECTION 9. (1) The duties of the Oregon Health Policy Board are to:

(a) Be the policy-making and oversight body for the Oregon Health Authority established in section 10 of this 2009 Act and all of the authority's departmental divisions, including the Oregon Health Insurance Exchange described in section 17 of this 2009 Act.

(b) Develop and submit a plan to the Legislative Assembly by December 31, 2010, to provide and fund access to affordable, quality health care for all Oregonians by 2015.

(c) Develop a program to provide health insurance premium assistance to all low and moderate income individuals who are legal residents of Oregon.

(d) Establish and continuously refine uniform, statewide health care quality standards for use by all purchasers of health care, third-party payers and health care providers as quality performance benchmarks.

(e) Establish evidence-based clinical standards and practice guidelines that may be used by providers.

(f) Approve and monitor community-centered health initiatives described in section 10 (1)(g) of this 2009 Act that are consistent with public health goals, strategies, programs and performance standards adopted by the Oregon Health Policy Board to improve the health of all Oregonians, and shall regularly report to the Legislative Assembly on the accomplishments and needed changes to the initiatives.

(g) Establish cost containment mechanisms to reduce health care costs.

(h) Ensure that Oregon's health care workforce is sufficient in numbers and training to meet the demand that will be created by the expansion in health coverage, health care system transformations, an increasingly diverse population and an aging workforce.

(i) Work with the Oregon congressional delegation to advance the adoption of changes in federal law or policy to promote Oregon's comprehensive health reform plan.

(j) Establish a health benefit package in accordance with section 16 of this 2009 Act to be used as the baseline for all health benefit plans offered through the Oregon Health Insurance Exchange.

(k) Develop and submit a plan to the Legislative Assembly by December 31, 2010, with recommended policies and procedures for the Oregon Health Insurance Exchange developed in accordance with section 17 of this 2009 Act.

(L) Develop and submit a plan to the Legislative Assembly by December 31, 2010, with recommendations for the development of a publicly owned health benefit plan that operates in the exchange under the same rules and regulations as all health insurance plans offered through the exchange, including fully allocated fixed and variable operating and capital costs.

(m) By December 31, 2010, investigate and report to the Legislative Assembly, and annually thereafter, on the feasibility and advisability of future changes to the health insurance market in Oregon, including but not limited to the following:

(A) A requirement for every resident to have health insurance coverage.

(B) A payroll tax as a means to encourage employers to continue providing health insurance to their employees.

(C) Expansion of the exchange to include a program of premium assistance and to advance reforms of the insurance market.

(D) The implementation of a system of interoperable electronic health records utilized by all health care providers in this state.

(n) Meet cost-containment goals by structuring reimbursement rates to reward comprehensive management of diseases, quality outcomes and the efficient use of resources by promoting cost-effective procedures, services and programs including, without limitation, preventive health, dental and primary care services, web-based office visits, telephone consultations and telemedicine consultations.

(o) Oversee the expenditure of moneys from the Health Care Workforce Strategic Fund to support grants to primary care providers and rural health practitioners, to increase the number of primary care educators and to support efforts to create and develop career ladder opportunities.

(p) Work with the Public Health Benefit Purchasers Committee, administrators of the medical assistance program and the Department of Corrections to identify uniform contracting standards for health benefit plans that achieve maximum quality and cost outcomes and align the contracting standards for all state programs to the greatest extent practicable.

(2) The Oregon Health Policy Board is authorized to:

(a) Subject to the approval of the Governor, organize and reorganize the authority as the board considers necessary to properly conduct the work of the authority.

(b) Submit directly to the Legislative Counsel, no later than October 1 of each even-numbered year, requests for measures necessary to provide statutory authorization to carry out any of the board's duties or to implement any of the board's recommendations. The measures may be filed prior to the beginning of the legislative session in accordance with the rules of the House of Representatives and the Senate.

(3) If the board or the authority is unable to perform, in whole or in part, any of the duties described in sections 1 to 18 of this 2009 Act without federal approval, the board is authorized to request waivers or other approval necessary to perform those duties. The board shall implement any portions of those duties not requiring legislative authority or federal approval, to the extent practicable.

(4) The enumeration of duties, functions and powers in this section is not intended to be exclusive nor to limit the duties, functions and powers imposed on the board by sections 1 to 18 of this 2009 Act and by other statutes.

(5) The board shall consult with the Department of Consumer and Business Services in completing the tasks set forth in subsection (1)(j), (k) and (m)(A) and (C) of this section.

ESTABLISHING OREGON HEALTH AUTHORITY

(Establishment; Duties; Powers)

SECTION 10. (1) The Oregon Health Authority is established. The authority shall:

(a) Carry out policies adopted by the Oregon Health Policy Board;

(b) Develop a plan for the Oregon Health Insurance Exchange in accordance with section 17 of this 2009 Act;

(c) Administer the Oregon Prescription Drug Program;

(d) Administer the Family Health Insurance Assistance Program;

(e) Provide regular reports to the board with respect to the performance of health services contractors serving recipients of medical assistance, including reports of trends in health services and enrollee satisfaction;

(f) Guide and support, with the authorization of the board, community-centered health initiatives designed to address critical risk factors, especially those that contribute to chronic disease;

(g) Be the state Medicaid agency for the administration of funds from Titles XIX and XXI of the Social Security Act and administer medical assistance under ORS chapter 414;

(h) In consultation with the Director of the Department of Consumer and Business Services, periodically review and recommend standards and methodologies to the Legislative Assembly for:

(A) Review of administrative expenses of health insurers;

(B) Approval of rates; and

(C) Enforcement of rating rules adopted by the Department of Consumer and Business Services;

(i) Structure reimbursement rates for providers that serve recipients of medical assistance to reward comprehensive management of diseases, quality outcomes and the efficient use of resources and to promote cost-effective procedures, services and programs including, without limitation, preventive health, dental and primary care services, web-based office visits, telephone consultations and telemedicine consultations;

(j) Guide and support community three-share agreements in which an employer, state or local government and an individual all contribute a portion of a premium for a community-centered health initiative or for insurance coverage; and

(k) Develop, in consultation with the Department of Consumer and Business Services and the Health Insurance Reform Advisory Committee, one or more products designed to provide more affordable options for the small group market.

(2) The Oregon Health Authority is authorized to:

(a) Create an all-claims, all-payer database to collect health care data and monitor and evaluate health care reform in Oregon and to provide comparative cost and quality information to consumers, providers and purchasers of health care about Oregon's health care systems and health plan networks in order to provide comparative information to consumers.

(b) Develop uniform contracting standards for the purchase of health care, including the following:

(A) Uniform quality standards and performance measures;

(B) Evidence-based guidelines for major chronic disease management and health care services with unexplained variations in frequency or cost;

(C) Evidence-based effectiveness guidelines for select new technologies and medical equipment; and

(D) A statewide drug formulary that may be used by publicly funded health benefit plans.

(c) Submit directly to the Legislative Counsel, no later than October 1 of each even-numbered year, requests for measures necessary to provide statutory authorization to carry out any of the authority's duties or to implement any of the board's recommendations. The measures may be filed prior to the beginning of the legislative session in accordance with the rules of the House of Representatives and the Senate.

(3) The enumeration of duties, functions and powers in this section is not intended to be exclusive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Authority by sections 1 to 18 of this 2009 Act or by other statutes.

(Director)

SECTION 11. (1) The Oregon Health Authority is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers of the authority.

(2) The Governor shall appoint the Director of the Oregon Health Authority, who holds office at the pleasure of the Governor. The appointment of the director shall be subject to confirmation by the Senate in the manner provided by ORS 171.562 and 171.565.

(3) The director shall have the power to:

(a) Contract for and procure, on a fee or part-time basis, or both, such actuarial, technical or other professional services as may be required for the discharge of duties.

(b) Obtain such other services as the director considers necessary or desirable, including participation in organizations of state insurance supervisory officials and appointment of advisory committees. A member of an advisory committee so appointed shall receive no compensation for services as a member, but, subject to any other applicable law regulating travel and other expenses of state officers, shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(4) The director may apply for, receive and accept grants, gifts or other payments, including property or services from any governmental or other public or private person and may make arrangement for the use of the receipts, including the undertaking of special studies and other projects relating to the costs of health care, access to health care, public health and health care reform.

NOTE: Section 12 was deleted by amendment. Subsequent sections were not renumbered.

(Officers and Employees)

SECTION 13. Subject to any applicable provisions of ORS chapter 240, the Director of the Oregon Health Authority shall appoint all subordinate officers and employees of the Oregon Health Authority, prescribe their duties and fix their compensation.

(General Authority to Adopt Rules)

SECTION 14. In accordance with applicable provisions of ORS chapter 183, the Director of the Oregon Health Authority may adopt rules necessary for the administration of the laws that the Oregon Health Authority is charged with administering.

(Oaths, Depositions and Subpoenas)

SECTION 15. The Director of the Oregon Health Authority, each deputy director and authorized representatives of the director may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of documents or other written information necessary to carry out the provisions of sections 1 to 18 of this 2009 Act. If any person fails to comply with a subpoena issued under this section or refuses to testify on matters on which the person lawfully may be interrogated, the director, deputy director or authorized representative may follow the procedure set out in ORS 183.440 to compel obedience.

(Baseline Health Benefit Package)

SECTION 16. The Oregon Health Authority, in developing and offering the health benefit package required by section 9 (1)(j) of this 2009 Act, may not establish policies or procedures that discourage insurers from offering more comprehensive health benefit plans that provide greater consumer choice at a higher cost. The health benefit package approved by the Oregon Health Policy Board shall:

(1) Promote the provision of services through an integrated health home model that reduces unnecessary hospitalizations and emergency department visits.

(2) Require little or no cost sharing for evidence-based preventive care and services, such as care and services that have been shown to prevent acute exacerbations of disease symptoms in individuals with chronic illnesses.

(3) Create incentives for individuals to actively participate in their own health care and to maintain or improve their health status.

(4) Require a greater contribution by an enrollee to the cost of elective or discretionary health services.

(5) Include a defined set of health care services that are affordable, financially sustainable and based upon the prioritized list of health services developed and updated by the Health Services Commission under ORS 414.720.

**ESTABLISHING DEPARTMENTAL ENTITIES WITHIN
OREGON HEALTH AUTHORITY**

(Oregon Health Insurance Exchange)

SECTION 17. (1) The Oregon Health Authority, in consultation with the Director of the Department of Consumer and Business Services, shall develop a plan for the staffing, funding and administration of the Oregon Health Insurance Exchange within the Oregon Health Authority. The plan shall set forth the duties and responsibilities of the exchange, which:

(a) Shall include consideration of the following:

(A) The selection and pricing of benefit plans to be offered through the exchange, including the health benefit package developed under section 9 (1)(j) of this 2009 Act. The plans shall include a range of price, copayment and deductible options.

(B) The rating and underwriting standards applicable to the exchange, including whether to incorporate community rating and guaranteed issue.

(C) Determining the role of the Public Employees' Benefit Board, the Oregon Educators Benefit Board and other public purchasers, including state-funded private nonprofit organizations.

(D) The development of a transition period for the rollover of individual policies into the exchange.

(E) Enforcement of the rules governing the sale of insurance within the exchange.

(F) Identifying the role of insurance producers.

(G) Providing benefit plans through the exchange at little or no cost to low income individuals.

(H) Maximizing the participation of private insurance plans offered through the exchange.

(I) Determining how to ensure that employees of small employers, and part time and seasonal workers will have access to portability plans.

(b) May include the following:

(A) Establishing criteria for the selection of insurance carriers to participate in the exchange.

(B) Establishing a requirement that all residents of this state have health care coverage.

(C) Determining whether the exchange should be the exclusive market for individual and small group purchasers, or whether such purchasers will continue to have other options to obtain coverage.

(D) Determining whether and how to use health savings accounts.

(E) Determining whether and how to use high deductible plans.

(F) Determining the extent to which it is permissible under the Internal Revenue Code to pay premiums, deductibles and copayments on a pretax basis.

(G) Determining the need to develop and implement a reinsurance program.

(2) The Oregon Health Authority shall submit the plan developed under this section to the Oregon Health Policy Board for approval.

(3) No later than October 1, 2010, the board shall submit a request to Legislative Counsel pursuant to section 9 (2)(b) of this 2009 Act for a measure to implement the plan.

(Establishment of Oregon Health Authority Fund)

SECTION 18. The Oregon Health Authority Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Health Authority Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Authority for carrying out the duties, functions and powers of the authority under section 10 of this 2009 Act.

TRANSFER OF FUNCTIONS TO OREGON HEALTH AUTHORITY

(Duties, Functions and Powers)

SECTION 19. (1)(a) Except as provided in paragraph (b) of this subsection, all of the duties, functions and powers of the Department of Human Services with respect to health and health care are imposed upon, transferred to and vested in the Oregon Health Authority, including but not limited to:

(A) Developing the policies for and the provision of publicly funded medical care and medical assistance in this state.

(B) Ensuring the promotion and protection of public health and the licensing of health care facilities.

(C) Developing the policies for and the provision of mental health treatment and treatment for substance use disorders.

(D) The administration of the Oregon Prescription Drug Program.

(E) Responsibility for the Office for Oregon Health Policy and Research and all of the functions of the office.

(F) The responsibilities of the Oregon Health Fund Board established in section 5, chapter 697, Oregon Laws 2007.

(b) The department shall retain all of its duties, functions and powers with respect to:

(A) Services provided in long term care facilities, home-based and community-based care settings and residential facilities to individuals who have physical disabilities or developmental disabilities or who receive residential facility care for seniors; and

(B) Non-medical services provided to individuals by the department.

(2) All duties, functions and powers of the Oregon Department of Administrative Services with respect to the Public Employees' Benefit Board and the Oregon Educators Benefit Board are imposed upon, transferred to and vested in the Oregon Health Authority.

(3) All of the duties, functions and powers of the Department of Consumer and Business Services with respect to the Oregon Medical Insurance Pool Board and the operation of the Oregon Medical Insurance Pool are imposed upon, transferred to and vested in the Oregon Health Authority.

(4) All of the duties, functions and powers of the Office of Private Health Partnerships, including the administration of the Family Health Insurance Assistance Program, are imposed upon, transferred to and vested in the Oregon Health Authority.

(5) The Oregon Health Policy Commission is abolished. On the operative date of this section, the tenure of office of the members of the Oregon Health Policy Commission ceases. All the duties, functions and powers of the Oregon Health Policy Commission are imposed upon, transferred to and vested in the Oregon Health Authority.

(6) The directors of the Department of Human Services, the Oregon Department of Administrative Services and the Department of Consumer and Business Services and the Administrator of the Office of Private Health Partnerships shall work together to establish a timeline and to implement the transfer of duties, functions and powers pursuant to this section.

(7) All changes necessary to accomplish this section shall be completed by June 30, 2011. When developing the 2011-2013 biennial budget, the Governor's budget shall reflect the implementation of the provisions of this section.

SECTION 20. On or before January 2, 2012, the Department of Human Services and the Oregon Health Authority may delegate to each other any duties, functions or powers transferred by section 19 of this 2009 Act that the department or the authority deem necessary for the efficient and effective operation of their respective functions.

SECTION 21. (1) No later than June 30, 2011, the Department of Human Services, the Oregon Department of Administrative Services, the Department of Consumer and Business Services, the Office of Private Health Partnerships and the Oregon Health Policy Commission shall:

(a) Deliver to the Oregon Health Authority all records and property within the jurisdiction of the departments and the office that relate to the duties, functions and powers transferred by section 19 of this 2009 Act; and

(b) Transfer to the Oregon Health Authority those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 19 of this 2009 Act.

(2) The Director of the Oregon Health Authority shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 19 of this 2009 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law. With respect to any employees transferred to the Oregon Health Authority under this section who are, on the effective date of this 2009 Act, represented by a labor organization or covered by a collective bargaining agreement, the authority shall recognize the labor organization as the collective bargaining representative for the employees and shall adopt and apply the terms of the collective bargaining agreement covering the employees.

(3) The Governor shall resolve any dispute between the Department of Human Services, the Department of Consumer and Business Services, the Oregon Department of Administrative Services, the Office of Private Health Partnerships or the Oregon Health Policy Commission and the Oregon Health Authority relating to transfers of records, property and employees under this section, and the Governor's decision is final.

(Effect on Actions, Proceedings and Prosecutions)

SECTION 22. The transfer of duties, functions and powers to the Oregon Health Authority by section 19 of this 2009 Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the Oregon Health Authority is substituted for the Department of Human Services, the Oregon Department of Administrative Services, the Department of Consumer and Business Services, the Office of Private Health Partnerships or the Oregon Health Policy Commission in the action, proceeding or prosecution.

SECTION 23. Notwithstanding the transfer of duties, functions and powers by section 19 of this 2009 Act, the rules of the Department of Human Services, the Oregon Department of Administrative Services, the Department of Consumer and Business Services and the Office of Private Health Partnerships that relate to the duties, functions and powers transferred by section 19 of this 2009 Act continue in effect until superseded or repealed by the rules of the Oregon Health Authority. References in the rules of the Department of Human Services, the Oregon Department of Administrative Services, the Department of Consumer and Business Services and the Office of Private Health Partnerships or to an officer or employee of such entities are considered to be references to the Oregon Health Authority or employee of the Oregon Health Authority.

(Effect on Liabilities, Duties and Obligations)

SECTION 24. (1) Nothing in sections 19 to 22 of this 2009 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers

transferred by section 19 of this 2009 Act. The Oregon Health Authority may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Department of Human Services, the Oregon Department of Administrative Services, the Department of Consumer and Business Services, the Office of Private Health Partnerships and the Oregon Health Policy Commission legally incurred under contracts, leases and business transactions executed, entered into or begun before the effective date of this 2009 Act and with respect to the duties, functions and powers transferred by section 19 of this 2009 Act are transferred to the Oregon Health Authority. For the purpose of succession to these rights and obligations, the Oregon Health Authority is a continuation of the Department of Human Services, the Oregon Department of Administrative Services, the Department of Consumer and Business Services, the Office of Private Health Partnerships and the Oregon Health Policy Commission and not a new authority.

SECTION 25. Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the Department of Human Services, the Oregon Department of Administrative Services, the Department of Consumer and Business Services, the Office of Private Health Partnerships or the Oregon Health Policy Commission or an executive, officer or employee of the departments, office or commission, with respect to the duties, functions and powers transferred by section 19 of this 2009 Act, the reference is considered to be a reference to the Oregon Health Policy Board, the Oregon Health Authority or an executive, officer or employee of the Oregon Health Authority.

NO RESTRAINT OF TRADE

SECTION 26. The activities of insurers working under the direction of the Oregon Health Authority and the Department of Consumer and Business Services pursuant to section 9 (1)(j) of this 2009 Act or participating in the Oregon Health Insurance Exchange created under section 17 of this 2009 Act do not constitute a conspiracy or restraint of trade or an illegal monopoly, nor are they carried out for the purposes of lessening competition or fixing prices arbitrarily.

PREMIUM RATE FILING

SECTION 27. Sections 28 and 29 of this 2009 Act are added to and made a part of ORS chapter 743.

SECTION 28. (1) When an insurer files a schedule or table of premium rates for individual, portability or small employer health insurance under ORS 743.018, the Director of the Department of Consumer and Business Services shall open a 30-day public comment period on the rate filing that begins on the date the insurer files the schedule or table of premium rates. The director shall post all comments to the website of the Department of Consumer and Business Services without delay.

(2) The director shall give written notice to an insurer approving or disapproving a rate filing or, with the written consent of the insurer, modifying a rate filing submitted under ORS 743.018 no later than 10 business days after the close of the public comment period. The notice shall comply with the requirements of ORS 183.415.

SECTION 29. An insurer licensed by the Department of Consumer and Business Services shall include in any rate filing under ORS 743.018 with respect to individual and small employer health insurance policies a statement of administrative expenses in the form and manner prescribed by the department by rule. The statement must include, but is not limited to:

- (1) A statement of administrative expenses on a per member per month basis; and
- (2) An explanation of the basis for any proposed premium rate increases or decreases.

SECTION 30. Sections 28 and 29 of this 2009 Act and the amendments to ORS 743.018 by section 31 of this 2009 Act apply to rate filings submitted to the Department of Consumer and Business Services on or after April 1, 2010.

SECTION 31. ORS 743.018 is amended to read:

743.018. (1) Except for group life and health insurance, and except as provided in ORS 743.015, every insurer shall file with the Director of the Department of Consumer and Business Services all schedules and tables of premium rates for life and health insurance to be used on risks in this state, and shall file any amendments to or corrections of such schedules and tables. **Premium rates are subject to approval, disapproval or withdrawal of approval by the director as provided in ORS 742.003, 742.005 and 742.007.**

(2) Except as provided in ORS 743.737 and 743.760 and subsection (3) of this section, a rate filing by a carrier for any of the following health benefit plans subject to ORS 743.730 to 743.773 shall be available for public inspection immediately upon submission of the filing to the director:

- (a) Health benefit plans for small employers.
- (b) Portability health benefit plans.
- (c) Individual health benefit plans.

[(3) The director, upon request by a carrier, may exempt from disclosure any part of the filing that the director determines to contain trade secrets and that would, if disclosed, harm competition. The part that the director determines to be exempt from disclosure shall be considered confidential for purposes of ORS 705.137. The director may not disclose a part of a filing subject to a carrier's request pending the director's determination under this subsection.]

(3) The director may by rule:

(a) Specify all information a carrier must submit as part of a rate filing under this section; and

(b) Identify the information submitted that will be exempt from disclosure under this section because the information constitutes a trade secret and would, if disclosed, harm competition.

(4) The director, after conducting an actuarial review of the rate filing, may approve a proposed premium rate for a health benefit plan for small employers or for an individual health benefit plan if, in the director's discretion, the proposed rates are:

- (a) Actuarially sound;**
- (b) Reasonable and not excessive, inadequate or unfairly discriminatory; and**
- (c) Based upon reasonable administrative expenses.**

(5) In order to determine whether the proposed premium rates for a health benefit plan for small employers or for an individual health benefit plan are reasonable and not excessive, inadequate or unfairly discriminatory, the director may consider:

(a) The insurer's financial position, including but not limited to profitability, surplus, reserves and investment savings.

(b) Historical and projected administrative costs and medical and hospital expenses.

(c) Historical and projected loss ratio between the amounts spent on medical services and earned premiums.

(d) Any anticipated change in the number of enrollees if the proposed premium rate is approved.

(e) Changes to covered benefits or health benefit plan design.

(f) Changes in the insurer's health care cost containment and quality improvement efforts since the insurer's last rate filing for the same category of health benefit plan.

(g) Whether the proposed change in the premium rate is necessary to maintain the insurer's solvency or to maintain rate stability and prevent excessive rate increases in the future.

(h) Any public comments received under section 28 of this 2009 Act pertaining to the standards set forth in subsection (4) of this section and this subsection.

(6) With the written consent of the insurer, the director may modify a schedule or table of premium rates filed in accordance with subsection (1) of this section.

(7) The requirements of this section do not supersede other provisions of law that require insurers, health care service contractors or multiple employer welfare arrangements providing health insurance to file schedules or tables of premium rates or proposed premium rates with the director or to seek the director's approval of rates or changes to rates.

NOTE: Sections 32 to 54 were deleted by amendment. Subsequent sections were not renumbered.

CONFORMING AMENDMENTS

SECTION 55. ORS 25.323 is amended to read:

25.323. (1) Except as provided in this section, whenever a child support order is entered or modified under this chapter, ORS chapter 107, 108, 109, 110 or ORS 416.400 to 416.465, 419B.400 or 419C.590, the court or the enforcing agency shall order one or both parties to provide satisfactory health care coverage that is reasonable in cost and accessible to the child. An order for health care coverage under this subsection may include health care coverage provided by a public entity.

(2) In addition to ordering health care coverage under subsection (1) of this section, the court or enforcing agency may order one or both parties to pay medical support for the child. Medical support ordered under this subsection must be reasonable in cost.

(3) If the court or the enforcing agency finds that the parties cannot provide satisfactory health care coverage because satisfactory health care coverage that is reasonable in cost and accessible to the child is not available at the time the child support order is entered, the court or the enforcing agency:

(a) Shall order one or both parties to provide satisfactory health care coverage that is reasonable in cost and accessible to the child when the coverage becomes available; and

(b) May order that, until the court or enforcing agency determines that satisfactory health care coverage that is reasonable in cost and accessible to the child is available and modifies the order, one or both parties pay medical support that is reasonable in cost. The court or enforcing agency shall make written findings on whether to order the payment of medical support under this paragraph.

(4) The cost of any amount ordered to provide satisfactory health care coverage and medical support under this section must be included in the child support calculation made under ORS 25.275.

[(5) The court or enforcing agency may not order a party to pay medical support under this section if the party is eligible to receive medical assistance under ORS 414.032, or has a dependent child in the household who is eligible to receive medical assistance under ORS 414.032.]

[(6)] (5) The Department of Justice shall adopt rules for determining the reasonableness of the cost of satisfactory health care coverage and of medical support for the purposes of this section, and for determining how the costs of providing health care coverage and medical support affect the total support obligation for a child under ORS 25.275.

SECTION 56. ORS 65.800 is amended to read:

65.800. For purposes of ORS 65.803 to 65.815:

(1) "Hospital" means a hospital as defined in ORS 442.015 *[(19)]*.

(2) "Noncharitable entity" means any person or entity that is not a public benefit or religious corporation and is not wholly owned or controlled by one or more public benefit or religious corporations.

SECTION 57. ORS 87.533 is amended to read:

87.533. A lien created by ORS 87.503 shall not be enforced so as to interfere with:

(1) Any assets or income allowed to the community spouse or dependent family member under 42 U.S.C. 1396r-5(d) or any rule of the Department of Human Services.

(2) The priority given to the recovery of medical assistance payments under ORS 115.125 (1)(i) **or (j)** or other medical assistance claims under ORS 414.105 (2) and (3).

(3) The eligibility of a person for medical assistance or entitlement to Medicaid assistance payments.

SECTION 58. ORS 90.113 is amended to read:

90.113. Residence in a [*Department of Human Services*] licensed program, facility or home described in ORS 430.306 to 430.375, 430.380, 430.385, 430.395, 430.397 to 430.401, 430.405 to 430.565, 430.570, 430.590, 443.400 to 443.455, 443.705 to 443.825 or 443.835 is not governed by this chapter.

SECTION 59. ORS 90.440 is amended to read:

90.440. (1) As used in this section:

(a) "Group recovery home" means a place that provides occupants with shared living facilities and that meets the description of a group home under 42 U.S.C. 300x-25.

(b) "Illegal drugs" includes controlled substances or prescription drugs:

(A) For which the tenant does not have a valid prescription; or

(B) That are used by the tenant in a manner contrary to the prescribed regimen.

(c) "Peace officer" means a sheriff, constable, marshal or deputy or a member of a state or city police force.

(2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has used or possessed alcohol or illegal drugs within the preceding seven days. For purposes of this subsection, the following are sufficient proof that a tenant has used or possessed alcohol or illegal drugs:

(a) The tenant fails a test for alcohol or illegal drug use;

(b) The tenant refuses a request made in good faith by the group recovery home that the tenant take a test for alcohol or illegal drug use; or

(c) Any person has personally observed the tenant using or possessing alcohol or illegal drugs.

(3) A group recovery home that undertakes the removal of a tenant under this section shall personally deliver to the tenant a written notice that:

(a) Describes why the tenant is being removed;

(b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs within the seven days preceding delivery of the notice;

(c) Specifies the date and time by which the tenant must move out of the group recovery home;

(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive relief to recover possession under ORS 105.121 and may bring an action to recover monetary damages; and

(e) Gives contact information for the local legal services office and for the Oregon State Bar's Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal services.

(4) A written notice in substantially the following form meets the requirements of subsection (3) of this section:

This notice is to inform you that you must move out of _____ (insert address of group recovery home) by _____ (insert date and time that is not less than 24 hours after delivery of notice).

The reason for this notice is _____ (specify use or possession of alcohol or illegal drugs, as applicable, and dates of occurrence).

The proof of your use or possession is _____ (specify facts).

If you did not use or possess alcohol or illegal drugs within the seven days before delivery of this notice, if this notice was given in bad faith or if your group recovery home has not substantially complied with ORS 90.440, you may be able to get a court to order the group recovery home to let you move back in. You may also be able to recover monetary damages.

You may be eligible for free legal services at your local legal services office _____ (insert telephone number) or reduced fee legal services through the Oregon State Bar at 1-800-452-7636.

(5) Within the notice period, a group recovery home shall allow a tenant removed under this section to follow any emergency departure plan that was prepared by the tenant and approved by the group recovery home at the time the tenancy began. If the removed tenant does not have an emergency departure plan, a representative of the group recovery home shall offer to take the removed tenant to a public shelter, detoxification center or similar location if existing in the community.

(6) The date and time for moving out specified in a notice under subsection (3) of this section must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant remains on the group recovery home premises after the date and time for moving out specified in the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255 and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who remains on the group recovery home premises after the date and time specified for moving out.

(7) A group recovery home that removes a tenant under this section shall send a copy of the notice described in subsection (3) of this section to the [Department of Human Services] **Oregon Health Authority** no later than 72 hours after delivering the notice to the tenant.

(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief to recover possession and may recover an amount equal to the greater of actual damages or three times the tenant's monthly rent if:

(a) The group recovery home removed the tenant in bad faith or without substantially complying with this section; or

(b) If removal is under subsection (2)(c) of this section, the removal was wrongful because the tenant did not use or possess alcohol or illegal drugs.

(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover possession under ORS 105.121 must commence the action to seek relief not more than 90 days after the date specified in the notice for the tenant to move out.

(10) In any court action regarding the removal of a tenant under this section, a group recovery home may present evidence that the tenant used or possessed alcohol or illegal drugs within seven days preceding the removal, whether or not the evidence was described in the notice required by subsection (3) of this section.

(11) This section does not prevent a group recovery home from terminating a tenancy as provided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to 105.168.

SECTION 60. ORS 92.337 is amended to read:

92.337. (1) The Real Estate Commissioner shall grant an exemption pursuant to this section if a subdivider or series partitioner submits on a form prepared by the commissioner, verification that:

(a) The subdivision or series partition is recorded pursuant to ORS 92.010 to 92.190;

(b) Each lot or parcel is situated on a surfaced roadway which, together with means for operation and maintenance, meets the standards of the governing body of the local jurisdiction and is either a concrete or asphalt surface road which has right of way and improvements, including curbs and necessary and adequate drainage structures, or a road which meets alternative standards of the governing body of the local jurisdiction;

(c) The subdivision or series partition, where necessary, has drainage structures and fill designed to prevent flooding and approved by the appropriate governing body;

(d) Energy sources and telephone services for normal domestic use are economically available to the subdivision or series partition and are ready for hookup for each lot or parcel at time of sale or lease;

(e) Water is available for each lot or parcel at the time of sale or lease of each lot or parcel in quantity and quality for domestic use as determined by the [Department of Human Services] **Oregon Health Authority**;

(f) A municipally owned disposal system, an individual or collective subsurface sewage disposal system to serve the lot or parcel, or a privately owned sewage disposal system is available for each lot or parcel at the time of sale or lease of each lot or parcel which meets the requirements of the Environmental Quality Commission;

(g) A surety bond, or bonds, or other security or agreements to complete the improvements is provided by the subdivider or series partitioner to the city or county having jurisdiction so that all of the subdivision or series partition improvements committed by the subdivider or series partitioner to the city or county will be completed; and

(h) Provisions, satisfactory to the commissioner, have been made for satisfaction of all liens and encumbrances existing against the subdivision or series partition which secure or evidence the payment of money.

(2) A subdivision or series partition granted exemption under this section shall be exempt from the provisions of ORS 92.305 to 92.495 and 92.820 except ORS 92.375, 92.385, 92.425, 92.427, 92.430, 92.433, 92.455, 92.460, 92.465, 92.475, 92.485, 92.490 and 92.495.

(3) The commissioner may withdraw the exemption provided by this section if the commissioner determines that the subdivider or series partitioner has provided false information or omitted to state material facts to obtain the exemption or has failed to comply with any provision to which the subdivider or series partitioner is subject under subsections (1) and (2) of this section.

(4) In the event that any provision under subsection (1) of this section is not or cannot be satisfied and without invoking the power granted under subsection (3) of this section, the commissioner and the subdivider or series partitioner may mutually agree in writing upon a written disclosure of the condition that shall be provided to any prospective purchaser prior to the sale or lease of any interest in the subdivision or series partition to carry out the public policy stated in ORS 92.313.

(5) The form required by subsection (1) of this section shall be accompanied by a filing fee of \$100 plus \$10 for each lot, parcel or interest in the subdivision or series partition, with a maximum fee of \$500.

(6) For purposes of verification by the subdivider or series partitioner under subsection (1)(b), (c) and (g) of this section, a copy of the conditions imposed by the appropriate governing body will be sufficient.

SECTION 61. ORS 93.270, as amended by section 16, chapter 100, Oregon Laws 2007, is amended to read:

93.270. (1) A person conveying or contracting to convey fee title to real property may not include in an instrument for that purpose a provision:

(a) Restricting the use of the real property by any person or group of persons by reason of race, color, religion, sex, sexual orientation, national origin or disability.

(b) Restricting the use of the real property by any home or facility that is licensed [*by or under the authority of the department*] under ORS 443.400 to 443.455 or 443.705 to 443.825 to provide residential care alone or in conjunction with treatment or training or a combination thereof.

(2) Any provision in an instrument executed in violation of subsection (1) of this section is void and unenforceable.

(3) An instrument that contains a provision restricting the use of real property in a manner listed in subsection (1)(b) of this section does not give rise to any public or private right of action to enforce the restriction.

(4)(a) An instrument that contains a provision restricting the use of real property by requiring roofing materials with a lower fire rating than that required in the state building code established under ORS chapter 455 does not give rise to any public or private right of action to enforce the restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Prohibitions on public or private right of action under this paragraph are limited solely to considerations of fire rating.

(b) As used in this subsection, "wildfire hazard zones" are areas that are legally declared by a governmental agency having jurisdiction over the area to have special hazards caused by a combination of combustible natural fuels, topography and climatic conditions that result in a significant

hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be determined using criteria established by the State Forestry Department.

SECTION 62. ORS 97.210 is amended to read:

97.210. The body of any person who died of smallpox, diphtheria, scarlet fever or other disease that the [*Department of Human Services*] **Oregon Health Authority**, by rule, may prescribe, shall not be subject to the provisions of ORS 97.170 to 97.200.

SECTION 63. ORS 97.450 is amended to read:

97.450. (1)(a) Whenever any cemetery that is within the limits of any county, city or town has been abandoned, or it is desirable to abandon such cemetery, the governing body of any county, if the cemetery is owned by the county, or the corporate authorities of the city or town, if the cemetery is owned by the city or town, or the trustees or directors, if the cemetery is owned by an association or corporation, may order that such burial ground be discontinued, have the remains of all persons interred in the cemetery moved to some other suitable place and provide for the removal and reerection of all stones and monuments marking said graves. Each removal must be made in an appropriate manner and in accordance with the directions of the Director of [*Human Services*] **the Oregon Health Authority**. Prior to any removal authorized under this section, written notice must be given to the family, or next of kin of the deceased, if known, and if unknown, notice of the removal shall be published for at least four successive weeks in a newspaper of general circulation in the county in which the cemetery is located and twice in a newspaper with statewide circulation.

(b) Any removal and the costs of the proceedings under this section shall be at the expense of the county, city or town, individual, corporation or association owning the cemetery to be moved.

(2) Notwithstanding subsection (1)(a) of this section, a cemetery or burial ground containing human remains that were interred before February 14, 1909, may not be discontinued or declared abandoned or have remains removed from the burial ground or cemetery without prior notice to and comment by the Oregon Commission on Historic Cemeteries. When commenting on a request to discontinue or declare abandoned a cemetery or burial ground, the commission shall consider:

- (a) The listing of the cemetery or burial ground under ORS 97.782;
- (b) The historic significance of the cemetery or graves included in the request; and
- (c) The findings of any archaeological survey of the cemetery or burial ground.

SECTION 64. ORS 97.977 is amended to read:

97.977. (1)(a) The [*Department of Human Services*] **Oregon Health Authority** may allow an organ procurement organization to establish a donor registry.

- (b) Only one donor registry may be established within this state.
- (c) The donor registry shall comply with subsections (3) and (4) of this section.

(2) The Department of Transportation shall:

(a) Cooperate with a person who administers the donor registry established under subsection (1) of this section for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amending or revoking an anatomical gift.

(b) When requested by the organ procurement organization that has established the donor registry in this state, the department shall electronically transfer to the organ procurement organization the name, address, birthdate and donor designation listed on the driver license or identification card of a person designated as a donor. The organ procurement organization shall treat the information transferred from the department as confidential and may use the information only to expedite the making of anatomical gifts authorized by the donor.

(3) The donor registry must:

(a) Allow a donor or other person authorized under ORS 97.955 to include on the donor registry a statement or symbol that the donor has made, amended or revoked an anatomical gift;

(b) Be accessible to a procurement organization to allow the procurement organization to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift; and

(c) Be accessible for purposes of this subsection seven days a week on a 24-hour basis.

(4) Personally identifiable information on the donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift.

SECTION 65. ORS 105.580 is amended to read:

105.580. (1) Except as provided in subsection (3) of this section, if the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the general judgment in the case.

(2) The order of abatement may direct the effectual closing of the premises, building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. The court shall not include provisions for the closing of the premises under the provisions of this subsection unless that relief is specifically requested in the complaint.

(3) The court, if satisfied of an owner's good faith, shall enter no order of abatement as to that owner if the court finds that the owner:

(a) Had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance;

(b) Has not been guilty of any contempt of court in the proceedings; and

(c) Will make best efforts to immediately abate any nuisance that may exist and prevent it from being a nuisance for a period of one year thereafter.

(4) Except for an order of abatement entered based on the manufacture of a controlled substance, if an order of abatement has been entered and an owner subsequently meets the requirements of this section, the order of abatement shall be canceled as to that owner.

(5) If the court enters an order under this section on the basis that the property was used for the manufacture of a controlled substance, the court shall send a copy of the order to the Director of *[Human Services]* **the Oregon Health Authority**. The director or the director's designee shall declare the property to be an illegal drug manufacturing site for purposes of ORS 453.855 to 453.912. An order of the court under this section shall not be canceled until the director or the director's designee determines the property to be fit for use. Upon determining the property to be fit for use, the director or designee shall notify the court, which shall cancel the abatement order.

SECTION 65a. ORS 106.045 is amended to read:

106.045. (1) In addition to any other fees provided by law, the county clerk shall collect a fee of \$25 upon the application for a marriage license.

(2) The county clerk shall regularly pay over to the *[Director of Human Services]* **Oregon Health Authority** all moneys collected under subsection (1) of this section to be credited to the Domestic Violence Fund pursuant to ORS 409.300.

SECTION 65b. Section 5, chapter 99, Oregon Laws 2007, is amended to read:

Sec. 5. (1) The *[Department of Human Services]* **Oregon Health Authority** shall prepare forms entitled:

(a) "Declaration of Domestic Partnership" meeting the requirements of section 6, **chapter 99, Oregon Laws 2007** *[of this 2007 Act]*; and

(b) "Certificate of Registered Domestic Partnership."

(2) The *[department]* **authority** shall distribute the forms to each county clerk. The *[department]* **authority** and each county clerk shall make the Declaration of Domestic Partnership forms available to the public.

SECTION 65c. Section 7, chapter 99, Oregon Laws 2007, is amended to read:

Sec. 7. (1) In addition to any other fees provided by law, the county clerk shall collect a fee of \$25 for registering a Declaration of Domestic Partnership.

(2) The county clerk shall regularly pay over to the *[Director of Human Services]* **Oregon Health Authority** all moneys collected under subsection (1) of this section to be credited to the Domestic Violence Fund pursuant to ORS 409.300.

SECTION 66. ORS 106.081 is amended to read:

106.081. When the county clerk issues a marriage license, the county clerk shall also give to the licensees a pamphlet describing the medical condition known as fetal alcohol syndrome, its causes and its effects. The pamphlet shall be provided to the counties by the [Department of Human Services] **Oregon Health Authority** under ORS 431.825 for distribution under this section.

SECTION 67. ORS 109.094 is amended to read:

109.094. Upon the paternity of a child being established in the proceedings, the father shall have the same rights as a father who is or was married to the mother of the child. The clerk of the court shall certify the fact of paternity to the Center for Health Statistics of the [Department of Human Services] **Oregon Health Authority**, and the Center for Health Statistics shall prepare a new birth certificate for the child.

SECTION 68. ORS 109.096 is amended to read:

109.096. (1) When the paternity of a child has not been established under ORS 109.070, the putative father is entitled to reasonable notice in adoption or other court proceedings concerning the custody of the child, except for juvenile court proceedings, if the petitioner knows, or by the exercise of ordinary diligence should have known:

(a) That the child resided with the putative father at any time during the 60 days immediately preceding the initiation of the proceeding, or at any time since the child's birth if the child is less than 60 days old when the proceeding is initiated; or

(b) That the putative father repeatedly has contributed or tried to contribute to the support of the child during the year immediately preceding the initiation of the proceeding, or during the period since the child's birth if the child is less than one year old when the proceeding is initiated.

(2) Except as provided in subsection (3) or (4) of this section, a verified statement of the mother of the child or of the petitioner, or an affidavit of another person with knowledge of the facts, filed in the proceeding and asserting that the child has not resided with the putative father, as provided in subsection (1)(a) of this section, and that the putative father has not contributed or tried to contribute to the support of the child, as provided in subsection (1)(b) of this section, is sufficient proof to enable the court to grant the relief sought without notice to the putative father.

(3) The putative father is entitled to reasonable notice in a proceeding for the adoption of the child if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Center for Health Statistics of the [Department of Human Services] **Oregon Health Authority** prior to the child's being placed in the physical custody of a person or persons for the purpose of adoption by them. If the notice of the initiation of filiation proceedings was not on file at the time of the placement, the putative father is barred from contesting the adoption proceeding.

(4) Except as otherwise provided in subsection (3) of this section, the putative father is entitled to reasonable notice in court proceedings concerning the custody of the child, other than juvenile court proceedings, if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Center for Health Statistics prior to the initiation of the proceedings.

(5) Notice under this section is not required to be given to a putative father who was a party to filiation proceedings under ORS 109.125 that were dismissed or resulted in a finding that he was not the father of the child.

(6) The notice required under this section shall be given in the manner provided in ORS 109.330.

(7) No notice given under this section need disclose the name of the mother of the child.

(8) A putative father has the primary responsibility to protect his rights, and nothing in this section shall be used to set aside an act of a permanent nature including, but not limited to, adoption or termination of parental rights, unless the father establishes within one year after the entry of the final judgment or order fraud on the part of a petitioner in the proceeding with respect to matters specified in subsections (1) to (5) of this section.

SECTION 69. ORS 109.225 is amended to read:

109.225. (1) After filing the petition, the petitioner shall cause the Center for Health Statistics of the [Department of Human Services] **Oregon Health Authority** to be served by mail with a notice setting forth the court in which the petition was filed, the date of the filing therein, the case number, the full name and address of the child, the date and place of the child's birth, or if the child is

not yet born, the date and place of the child's conception and the probable date of the child's birth, the full names and addresses of the child's alleged parents, and the names and addresses of the petitioner and of the respondents in the proceedings.

(2) The Center for Health Statistics shall file immediately the notice, or a copy thereof, with the record of the birth of the child or in the same manner as its filing of records of birth if the center does not have a record of the birth. The center shall only provide the information contained in the notice to persons whose names appear in the notice or to persons or agencies showing a legitimate interest in the parent-child relationship including, but not limited to, parties to adoption, juvenile court or heirship proceedings.

SECTION 70. ORS 109.251 is amended to read:

109.251. As used in ORS 109.250 to 109.262, "blood tests" includes any test for genetic markers to determine paternity of a type generally acknowledged as reliable by accreditation bodies designated by the [*Department of Human Services*] **Oregon Health Authority** in compliance with the United States Secretary of Health and Human Services, and performed by a laboratory approved by such accreditation body. "Blood tests" includes but is not limited to the Human Leucocyte Antigen Test, the deoxyribonucleic acid test and any test that extracts genetic material from any human tissue.

SECTION 71. ORS 109.675 is amended to read:

109.675. (1) A minor 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder or a chemical dependency, excluding methadone maintenance, by a physician licensed by the Oregon Medical Board, a psychologist licensed by the State Board of Psychologist Examiners, a nurse practitioner registered by the Oregon State Board of Nursing, a clinical social worker licensed by the State Board of Clinical Social Workers or a community mental health [*and developmental disabilities*] program established and operated pursuant to ORS 430.620 when approved to do so by the [*Department of Human Services*] **Oregon Health Authority** pursuant to rule.

(2) However, the person providing treatment shall have the parents of the minor involved before the end of treatment unless the parents refuse or unless there are clear clinical indications to the contrary, which shall be documented in the treatment record. The provisions of this subsection do not apply to:

(a) A minor who has been sexually abused by a parent; or

(b) An emancipated minor, whether emancipated under the provisions of ORS 109.510 and 109.520 or 419B.550 to 419B.558 or, for the purpose of this section only, emancipated by virtue of having lived apart from the parents or legal guardian while being self-sustaining for a period of 90 days prior to obtaining treatment as provided by this section.

SECTION 72. ORS 109.680 is amended to read:

109.680. A physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health [*and developmental disabilities*] program described in ORS 109.675 may advise the parent or parents or legal guardian of any minor described in ORS 109.675 of the diagnosis or treatment whenever the disclosure is clinically appropriate and will serve the best interests of the minor's treatment because the minor's condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary, or the minor's condition requires detoxification in a residential or acute care facility. If such disclosure is made, the physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health [*and developmental disabilities*] program shall not be subject to any civil liability for advising the parent, parents or legal guardian without the consent of the minor.

SECTION 73. ORS 109.685 is amended to read:

109.685. A physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health [*and developmental disabilities*] program described in ORS 109.675 who in good faith provides diagnosis or treatment to a minor as authorized by ORS 109.675 shall not be subject to any civil liability for providing such diagnosis or treatment without consent of the parent or legal guardian of the minor.

SECTION 74. ORS 109.695 is amended to read:

109.695. For the purpose of carrying out the policy and intent of ORS 109.675 to 109.695 while taking into account the respective rights of minors at risk of chemical dependency or mental or emotional disorder and the rights and interests of parents or legal guardians of such minors, the [Department of Human Services] **Oregon Health Authority** shall adopt rules for the implementation of ORS 109.675 to 109.695 by community mental health [and developmental disabilities] programs approved to do so. Such rules shall provide for the earliest feasible involvement of the parents or guardians in the treatment plan consistent with clinical requirements of the minor.

SECTION 75. ORS 110.318 is amended to read:

110.318. In a proceeding to establish, enforce or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual if:

- (1) The individual is personally served with notice within this state;
- (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in this state;
- (4) The individual resided in this state and provided prenatal expenses or support for the child;
- (5) The child resides in this state as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in the registry maintained in this state by the Center for Health Statistics of the [Department of Human Services] **Oregon Health Authority** by filing a voluntary acknowledgment of paternity under ORS 109.070; or
- (8) There is any other basis consistent with the Constitutions of the State of Oregon and the United States for the exercise of personal jurisdiction.

SECTION 76. ORS 113.085 is amended to read:

113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:

- (a) To the executor named in the will.
- (b) To the surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.
- (c) To the nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.
- (d) To the Director of Human Services or a designee, if it appears the decedent received public assistance pursuant to ORS chapter 411 [or 414 and that such assistance is a claim against the estate].
- (e) To the Director of the Oregon Health Authority or a designee, if it appears the decedent received medical assistance pursuant to ORS chapter 414.**

[(e)] **(f)** To the Department of Veterans' Affairs, if the decedent was a protected person under ORS 406.050 (7), and the department has joined in the petition for such appointment.

[(f)] **(g)** To any other person.

(2) Except as provided in subsection (3) of this section, the court shall appoint the Department of State Lands as personal representative if it appears that the decedent died wholly intestate and without known heirs. The Attorney General shall represent the Department of State Lands in the administration of the estate. Any funds received by the Department of State Lands in the capacity of personal representative may be deposited in accounts, separate and distinct from the General Fund, established with the State Treasurer. Interest earned by such account shall be credited to that account.

(3) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235 approving the filing of the petition by the person.

Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

SECTION 77. ORS 113.105 is amended to read:

113.105. (1) Unless a testator provides in a will that no bond shall be required of the executor of the estate, or unless the personal representative is the sole heir or devisee or is the Department of State Lands, [*or is the Director of Human Services or a designee, or is*] the Department of Veterans' Affairs, **the Director of Human Services or a designee or the Director of the Oregon Health Authority or a designee**, the personal representative may not act nor shall letters be issued to the personal representative until the personal representative files with the clerk of the court a bond. The bond shall be executed by a surety company authorized to transact surety business in this state, or by one or more sufficient personal sureties approved by the court. A personal surety must be a resident of this state. The court may, in its discretion, require a bond notwithstanding any provision in a will that no bond is required. The bond shall be for the security and benefit of all interested persons and shall be conditioned upon the personal representative faithfully performing the duties of the trust.

(2) The amount of the bond set by the court shall be adequate to protect interested persons, but in no event shall it be less than \$1,000. In setting the amount of the bond the court shall consider:

- (a) The nature, liquidity and apparent value of the assets of the estate.
- (b) The anticipated income during administration.
- (c) The probable indebtedness and taxes.

(3) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative.

(4) Notwithstanding any other provisions of this section, a court may, in its discretion, waive the requirement of a bond if all devisees and heirs known to the court agree in writing that the requirement be waived and the signed agreement is filed with the court at the time of filing of the petition for the appointment of a personal representative.

SECTION 78. ORS 113.145 is amended to read:

113.145. (1) Upon appointment a personal representative shall deliver or mail to the devisees, heirs and the persons described in ORS 113.035 (8) and (9) who were required to be named in the petition for appointment of a personal representative, at the addresses therein shown, information that shall include:

- (a) The title of the court in which the estate proceeding is pending and the clerk's file number;
- (b) The name of the decedent and the place and date of the death of the decedent;
- (c) Whether or not a will of the decedent has been admitted to probate;
- (d) The name and address of the personal representative and the attorney of the personal representative;
- (e) The date of the appointment of the personal representative;
- (f) A statement advising the devisee, heir or other interested person that the rights of the devisee, heir or other interested person may be affected by the proceeding and that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative;
- (g) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (8), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 113.075 within four months of the delivery or mailing of the information; and
- (h) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (9), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 112.049 within four months of the delivery or mailing of the information.

(2) If the personal representative is a devisee, heir or other interested person named in the petition the personal representative is not required to deliver or mail the information under this section to the personal representative.

(3) The failure of the personal representative to give information under this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) Within 30 days after the date of appointment a personal representative shall cause to be filed in the estate proceeding proof of the delivery or mailing required by this section or a waiver of notice as provided under ORS 111.225. The proof shall include a copy of the information delivered or mailed and the names of the persons to whom it was delivered or mailed.

(5) If before the filing of the final account the personal representative has actual knowledge that the petition did not include the name and address of any person described in ORS 113.035 (4), (5), (7), (8) or (9), the personal representative shall:

(a) Make reasonable efforts under the circumstances to ascertain each of those names and addresses;

(b) Promptly deliver or mail information as described in subsection (1) of this section to each of those persons located after the filing of the petition and before the filing of the final account; and

(c) File in the estate proceeding, on or before filing the final account under ORS 116.083, proof of compliance with this subsection or a waiver of notice as provided under ORS 111.225.

(6) Within 30 days after the appointment of a personal representative, the personal representative must mail or deliver the information specified in subsection (1) of this section and a copy of the death certificate of the decedent to the Department of Human Services **and the Oregon Health Authority**.

SECTION 79. ORS 114.525 is amended to read:

114.525. An affidavit filed under ORS 114.515 shall:

(1) State the name, age, domicile, post-office address and Social Security number of the decedent;

(2) State the date and place of the decedent's death. A certified copy of the death certificate shall be attached to the affidavit;

(3) Describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) State that no application or petition for the appointment of a personal representative has been granted in Oregon;

(5) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

(6) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address;

(7) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat;

(9) State that reasonable efforts have been made to ascertain creditors of the estate. List the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state

that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address;

(11) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services **and the Oregon Health Authority**;

(12) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555; and

(13) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(a) A petition for summary determination is filed within four months of the filing of the affidavit; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555.

SECTION 80. ORS 114.535 is amended to read:

114.535. (1) Any person indebted to the decedent or having possession of personal property belonging to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered by the affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the personal property to the affiant. Any person who has received property of the decedent under ORS 446.616, 722.262 or 803.094, or any similar statute providing for the transfer of property of an estate which is not being probated shall pay, transfer or deliver the property to the affiant if the person would be required to pay, transfer or deliver the property to a personal representative of the estate. The transferor is discharged and released from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(2) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(3) If a person to whom an affidavit is delivered refuses to pay, deliver or transfer any personal property to the affiant or the person entitled to the property as disclosed in the affidavit filed under ORS 114.515, the property may be recovered or its payment, delivery or transfer compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(4) If the [*affidavit was signed by the Director of Human Services or a designee of the director, the director or the designee*] **Director of Human Services, the designee of the Director of Human Services, the Director of the Oregon Health Authority or the designee of the Director of the Oregon Health Authority signs the affidavit, the Director of Human Services, the designee of the Director of Human Services, the Director of the Oregon Health Authority or the designee of the Director of the Oregon Health Authority** may certify a copy of the affidavit for the purposes described in subsection (1) or (2) of this section.

SECTION 81. ORS 115.125 is amended to read:

115.125. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims in full, the personal representative shall make payment in the following order:

(a) Support of spouse and children, subject to the limitations imposed by ORS 114.065.

(b) Expenses of administration.

(c) Expenses of a plain and decent funeral and disposition of the remains of the decedent.

(d) Debts and taxes with preference under federal law.

(e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent.

(f) Taxes with preference under the laws of this state that are due and payable while possession of the estate of the decedent is retained by the personal representative.

(g) Debts owed employees of the decedent for labor performed within 90 days immediately preceding the date of death of the decedent.

(h) Child support arrearages.

(i) **The claim of the Oregon Health Authority for the amount of the state's monthly contribution to the federal government to defray the costs of outpatient prescription drug coverage provided to a person who is eligible for Medicare Part D prescription drug coverage and who receives benefits under the state medical assistance program or Title XIX of the Social Security Act.**

[(i)] (j) The claim of the Department of Human Services for the net amount of assistance paid to or for the decedent, in the following order:

[(A)] *The amount of the state's monthly contribution to the federal government to defray the costs of outpatient prescription drug coverage provided to a person who is eligible for Medicare Part D prescription drug coverage and who receives benefits under the state medical assistance program or Title XIX of the Social Security Act;*

[(B)] (A) Public assistance, as defined in ORS 411.010, funded entirely by moneys from the General Fund; **and**

[(C)] (B) Public assistance, as defined in ORS 411.010, funded by a combination of state and federal funds; *and*].

[(D)] (k) **The claim of the Department of Human Services or the Oregon Health Authority for the care** [Care] and maintenance of the decedent at a state institution, as provided in ORS 179.610 to 179.770.

[(j)] (L) The claim of the Department of Corrections for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

[(k)] (m) All other claims against the estate.

(2) If the applicable assets of the estate are insufficient to pay in full all expenses or claims of any one class specified in subsection (1) of this section, each expense or claim of that class shall be paid only in proportion to the amount thereof.

SECTION 82. ORS 116.093 is amended to read:

116.093. (1) Upon filing the final account and petition for a judgment of distribution, the personal representative shall fix a time for filing objections thereto in a notice thereof. Not less than 20 days before the time fixed in the notice, the personal representative shall cause a copy of the notice to be mailed to:

(a) Each heir at the last-known address of the heir, if the decedent died intestate.

(b) Each devisee at the last-known address of the devisee, if the decedent died testate.

(c) Each creditor who has not received payment in full and whose claim has not otherwise been barred.

(d) Any other person known to the personal representative to have or to claim an interest in the estate being distributed.

(2) The notice need not be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to notice shall be filed in the estate proceeding at or before approval of the final account.

(4) If the Department of Human Services has presented a claim under ORS chapter 411 [or 414 or ORS 416.310 to 416.340, 416.510 to 416.990 or 417.010 to 417.080] **or ORS 416.310 to 416.340 or 417.010 to 417.080, or the Oregon Health Authority has presented a claim under ORS chapter 414 or ORS 416.310 to 416.340 or 416.510 to 416.990**, or the Department of Corrections [or the authorized agent of the Department of Corrections] has presented a claim under ORS 179.620 (3), and the claim has not been settled or paid in full, the personal representative shall mail to the appropriate department a copy of the final account at the same time, and shall make proof of the mailing in the same manner, as the notice provided for in this section.

SECTION 83. ORS 116.253 is amended to read:

116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or in part to the state, or within eight years after the entry of a judgment or order escheating property of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a person who at the time of the escheat was unable to prove entitlement to the escheated property.

(2) The claim shall be made by a petition filed with the Director of the Department of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition must include a declaration under penalty of perjury in the form required by ORCP 1 E and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the property or proceeds;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement;

(d) That the claimant claims the property or proceeds as an heir or devisee or as the personal representative of the estate of an heir or devisee, setting forth the relationship, if any, of the claimant to the decedent who at the time of death was the owner;

(e) That 10 years have not elapsed since the death of the decedent, or that eight years have not elapsed since the entry of the judgment or order escheating the property to the state; and

(f) If the petition is not filed by the claimant, the status of the petitioner.

(3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the Director of the Department of State Lands shall deliver the property to the petitioner, subject to and charged with any tax on the property and the costs and expenses of the state in connection therewith.

(4) If the person whose property escheated or reverted to the state was at any time an inmate of a state institution in Oregon for persons with mental illness or mental retardation, the reasonable unpaid cost[, *as determined by the Department of Human Services,*] of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property. **The reasonable unpaid cost of care and maintenance shall be determined by:**

(a) The Department of Human Services for patients of the Eastern Oregon Training Center; and

(b) The Oregon Health Authority for patients of the Blue Mountain Recovery Center and the Oregon State Hospital.

(5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

SECTION 84. ORS 124.050 is amended to read:

124.050. As used in ORS 124.050 to 124.095:

(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.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(f) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with a disability to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the person to believe that the threat will be carried out.

(2) "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.

(3) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(4) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor or podiatric physician and surgeon, 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 Services[, *county health department or community mental health and*] **or community** developmental disabilities program.

(d) Employee of the Oregon Health Authority, county health department or community mental health program.

[(d)] **(e)** Peace officer.

[(e)] **(f)** Member of the clergy.

[(f)] **(g)** Licensed clinical social worker.

[(g)] **(h)** Physical, speech or occupational therapists.

[(h)] **(i)** Senior center employee.

[(i)] **(j)** Information and referral or outreach worker.

[(j)] **(k)** Licensed professional counselor or licensed marriage and family therapist.

[(k)] **(L)** Any public official who comes in contact with elderly persons in the performance of the official's official duties.

[(L)] **(m)** Firefighter or emergency medical technician.

SECTION 85. ORS 125.060 is amended to read:

125.060. (1) The notices required by this section must be given to all persons whose identities and addresses can be ascertained in the exercise of reasonable diligence by the person required to give the notice.

(2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be given by the petitioner to the following persons:

(a) The respondent, if the respondent has attained 14 years of age.

(b) The spouse, parents and adult children of the respondent.

(c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the respondent.

(d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the respondent.

(e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of the respondent during the 60-day period before the filing of the petition.

(g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

(h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411 [or 414] by the State of Oregon through the Department of Human Services, a representative of the department.

(j) If the respondent is receiving moneys paid or payable for medical assistance provided under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, a representative of the authority.

[(j)] **(k)** If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the respondent is confined.

[(k)] **(L)** If the respondent is a foreign national, the consulate for the respondent's country.

[(L)] **(m)** Any other person that the court requires.

(3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those sought in the petition must be given by the person making the motion to the following persons:

(a) The protected person, if the protected person has attained 14 years of age.

(b) Any person who has filed a request for notice in the proceedings.

(c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the protected person.

(d) If the protected person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the protected person is confined.

(f) Any other person that the court requires.

(4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and phone number of the person requesting notice. A copy of the request must be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court. The person filing the request must pay the fee specified by ORS 21.310 (5).

(5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific provision of this chapter.

(6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and grandparents.

(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following persons:

(a) Any attorney who is representing the respondent in any capacity.

(b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility, the system described in ORS 192.517 (1).

(8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian has been appointed, notice of the motions specified in subsection (3) of this section must be given by the person making the motion to the following persons:

(a) Any attorney who represented the protected person at any time during the protective proceeding.

(b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the system described in ORS 192.517 (1).

(9) A respondent or protected person may not waive the notice required under this section.

(10) The requirement that notice be served on an attorney for a respondent or protected person under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the respondent or protected person in the protective proceeding.

NOTE: Section 86 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 87. ORS 127.646 is amended to read:

127.646. As used in ORS 127.646 to 127.654:

(1) "Health care organization" means a home health agency, hospice program, hospital, long term care facility or health maintenance organization.

(2) "Health maintenance organization" has the meaning given that term in ORS 750.005, except that "health maintenance organization" includes only those organizations that participate in the federal Medicare or Medicaid programs.

(3) "Home health agency" has the meaning given that term in ORS 443.005.

(4) "Hospice program" has the meaning given that term in ORS 443.850.

(5) "Hospital" has the meaning given that term in ORS 442.015 [(19)], except that "hospital" does not include a special inpatient care facility.

(6) "Long term care facility" has the meaning given that term in ORS 442.015, except that "long term care facility" does not include an intermediate care facility for individuals with mental retardation.

SECTION 88. ORS 127.720 is amended to read:

127.720. (1) The physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(a) If the principal is committed to the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 426.005 to 426.390 and treatment is authorized in compliance with ORS 426.385 (3) and administrative rule; or

(b) In cases of emergency endangering life or health.

(2) A declaration does not limit any authority provided in ORS 426.005 to 426.390 either to take a person into custody, or to admit, retain or treat a person in a health care facility.

SECTION 89. ORS 127.865 is amended to read:

127.865. §3.11. Reporting requirements. (1)(a) The [Department of Human Services] **Oregon Health Authority** shall annually review a sample of records maintained pursuant to ORS 127.800 to 127.897.

(b) The [department] **authority** shall require any health care provider upon dispensing medication pursuant to ORS 127.800 to 127.897 to file a copy of the dispensing record with the [department] **authority**.

(2) The [department] **authority** shall make rules to facilitate the collection of information regarding compliance with ORS 127.800 to 127.897. Except as otherwise required by law, the information collected shall not be a public record and may not be made available for inspection by the public.

(3) The [department] **authority** shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section.

SECTION 90. ORS 130.370 is amended to read:

130.370. (1) Within three months after a petition is entered in the register of the court under ORS 130.355, or within such longer time as the court allows, a trustee must make reasonably diligent efforts to investigate the financial records and affairs of the settlor and to take such further actions as are reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the trust estate. The court shall allow the trustee as much time as requested by the trustee for the purpose of determining the claims against the trust estate. The trustee must thereafter cause to be delivered or mailed a notice containing the information required in subsection (2) of this section to each person known by the trustee to have or to assert a claim against the trust estate and to the Department of Human Services **and the Oregon Health Authority**. Notice under this section is not required for any claim that has already been presented, accepted or paid in full or on account of a claim that is merely conjectural.

(2) The notice required by this section must include:

- (a) The name and Social Security number of the settlor;
- (b) The name of the trustee and the address at which claims must be presented;
- (c) A statement that claims against the trust estate that are not presented to the trustee within 30 days after the date of the notice may be barred;
- (d) The date of the notice, which shall be the date on which the notice is delivered or mailed; and
- (e) A copy of the settlor's death certificate.

SECTION 91. ORS 130.425 is amended to read:

130.425. (1) Claims allowed against the trust estate under ORS 130.350 to 130.450 must be paid by the trustee in the following order of priority:

- (a) Expenses of administering the trust estate.
- (b) Expenses of a plain and decent funeral and disposition of the remains of the settlor.
- (c) Debts and taxes with preference under federal law.
- (d) Reasonable and necessary medical and hospital expenses of the last illness of the settlor, including compensation of persons attending the settlor.
- (e) Taxes with preference under the laws of this state that are due and payable while possession of the trust estate of the settlor is retained by the trustee.
- (f) Debts owed employees of the settlor for labor performed within 90 days immediately preceding the date of death of the settlor.
- (g) Child support arrearages.
- (h) A claim of the Department of Human Services for the net amount of public assistance, as defined in ORS 411.010[, *paid to or for the settlor, and the claim of the department for care and maintenance of any settlor who was at a state institution to the extent provided in ORS 179.610 to 179.770*].

(i) A claim of the Department of Human Services or the Oregon Health Authority for the care and maintenance of any settlor who was a patient at a state institution under ORS 179.610 to 179.770.

[(i)] **(j)** All other claims against the trust estate.

(2) If the assets of the trust estate are insufficient to pay in full all expenses or claims of any one class specified in subsection (1) of this section, each expense or claim of that class shall be paid only in proportion to the amount thereof.

SECTION 92. ORS 135.139 is amended to read:

135.139. (1) When a person has been charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the district attorney, upon the request of the victim or the parent or guardian of a minor or incapacitated victim, shall seek the consent of the person charged to submit to a test for HIV and any other communicable disease. In the absence of such consent or failure to submit to the test,

the district attorney may petition the court for an order requiring the person charged to submit to a test for HIV and any other communicable disease.

(2)(a) At the time of an appearance before a circuit court judge on a criminal charge, the judge shall inform every person arrested and charged with a crime, in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, of the availability of testing for HIV and other communicable diseases and shall cause the alleged victim of such a crime, if any, or a parent or guardian of the victim, if any, to be notified that testing for HIV and other communicable diseases is available. The judge shall inform the person arrested and charged and the victim, or parent or guardian of the victim, of the availability of counseling under the circumstances described in subsection (7) of this section.

(b) Notwithstanding the provisions of ORS 433.045, if the district attorney files a petition under subsection (1) of this section, the court shall order the person charged to submit to testing if the court determines there is probable cause to believe that:

(A) The person charged committed the crime; and

(B) The victim has received a substantial exposure, as defined by rule of the [*Department of Human Services*] **Oregon Health Authority**.

(3) Notwithstanding the provisions of ORS 433.045, upon conviction of a person for any crime in which the court determines from the facts that the transmission of body fluids from one person to another was involved and if the person has not been tested pursuant to subsection (2) of this section, the court shall seek the consent of the convicted person to submit to a test for HIV and other communicable diseases. In the absence of such consent or failure to submit to the test, the court shall order the convicted person to submit to the test if the victim of the crime, or a parent or guardian of the victim, requests the court to make such order.

(4) When a test is ordered under subsection (2) or (3) of this section, the victim of the crime or a parent or guardian of the victim, shall designate an attending physician to receive such information on behalf of the victim.

(5) If an HIV test results in a negative reaction, the court may order the person to submit to another HIV test six months after the first test was administered.

(6) The result of any test ordered under this section is not a public record and shall be available only to:

(a) The victim.

(b) The parent or guardian of a minor or incapacitated victim.

(c) The attending physician who is licensed to practice medicine.

(d) The [*Department of Human Services*] **Oregon Health Authority**.

(e) The person tested.

(7) If an HIV test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling as required by the [*Department of Human Services*,] **Oregon Health Authority** by rule. The results of HIV tests ordered under this section shall be reported to the [*Department of Human Services*] **authority**. Counseling and referral for appropriate health care, testing and support services as directed by the Director of [*Human Services*] **the Oregon Health Authority** shall be provided to the victim or victims at the request of the victim or victims, or the parent or guardian of a minor or incapacitated victim.

(8) The costs of testing and counseling provided under subsections (2), (3) and (7) of this section shall be paid through the compensation for crime victims program authorized by ORS 147.005 to 147.367 from amounts appropriated for such purposes. Restitution to the state for payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.

(9) When a court orders a convicted person to submit to a test under this section, the withdrawal of blood may be performed only by a physician licensed to practice medicine or by a licensed health care provider acting within the provider's licensed scope of practice or acting under the supervision of a physician licensed to practice medicine.

(10) No person authorized by subsection (9) of this section to withdraw blood, no person assisting in the performance of the test nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

(11) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the information. Any violation of this subsection is a Class C misdemeanor.

(12) As used in this section:

(a) "HIV test" means a test as defined in ORS 433.045.

(b) "Parent or guardian of the victim" means a custodial parent or legal guardian of a victim who is a minor or incapacitated person.

(c) "Positive reaction" means a positive HIV test with a positive confirmatory test result as specified by the [Department of Human Services] **Oregon Health Authority**.

(d) "Transmission of body fluids" means the transfer of blood, semen, vaginal secretions or other body fluids identified by rule of the [Department of Human Services] **authority**, from the perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

(e) "Victim" means the person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the crime.

SECTION 93. ORS 135.917 is amended to read:

135.917. (1) Courts having jurisdiction over the offense of possession of less than one ounce of marijuana shall designate agencies or organizations to perform the diagnostic assessment and treatment required under possession of marijuana diversion agreements described in ORS 135.907. The designated agencies or organizations must meet the standards set by the [Department of Human Services] **Oregon Health Authority** to perform the diagnostic assessment and treatment of drug dependency and must be certified by the [Department of Human Services] **authority**. Wherever possible, a court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of treatment for drug dependency.

(2) Monitoring of a defendant's progress under a diversion agreement shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the court stating the defendant's successful completion or failure to complete all or any part of the treatment program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report of the diagnostic assessment agency or organization that is required by this subsection a part of the record of the case.

SECTION 94. ORS 137.227 is amended to read:

137.227. (1) After a defendant has been convicted of a crime, the court may cause the defendant to be evaluated to determine if the defendant is an alcoholic or a drug-dependent person, as those terms are defined in ORS 430.306. The evaluation shall be conducted by an agency or organization designated under subsection (2) of this section.

(2) The court shall designate agencies or organizations to perform the evaluations required under subsection (1) of this section. The designated agencies or organizations must meet the standards set by the [Department of Human Services] **Oregon Health Authority** to perform the evaluations for drug dependency and must be approved by the [department] **authority**. Wherever possible, a court shall designate agencies or organizations to perform the evaluations that are separate from those that may be designated to carry out a program of treatment for alcohol or drug dependency.

SECTION 95. ORS 137.228 is amended to read:

137.228. (1) When a defendant is sentenced for a crime, the court may enter a finding that the defendant is an alcoholic or a drug-dependent person, as those terms are defined in ORS 430.306. The finding may be based upon any evidence before the court, including, but not limited to, the facts

of the case, stipulations of the parties and the results of any evaluation conducted under ORS 137.227.

(2) When the court finds that the defendant is an alcoholic or a drug-dependent person, the court, when it sentences the defendant to a term of imprisonment, shall direct the Department of Corrections to place the defendant in an appropriate alcohol or drug treatment program, to the extent that resources are available. The alcohol or drug treatment program shall meet the standards promulgated by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 430.357.

SECTION 96. ORS 137.464 is amended to read:

137.464. (1)(a) At the death warrant hearing under ORS 137.463, the court shall order that the [Department of Human Services] **Oregon Health Authority** or its designee perform an assessment of the defendant's mental capacity to engage in reasoned choices of legal strategies and options if:

(A) The defendant indicates the wish to waive the right to counsel; and

(B) The court has substantial reason to believe that, due to mental incapacity, the defendant cannot engage in reasoned choices of legal strategies and options.

(b) The court also shall order an assessment described in paragraph (a) of this subsection upon motion by the state.

(2) If the requirements of subsection (1) of this section are met, the court may order the defendant to be committed to a state mental hospital designated by the [Department of Human Services] **authority** for a period not exceeding 30 days for the purpose of assessing the defendant's mental capacity. The report of any competency assessment performed under this section must include, but need not be limited to, the following:

(a) A description of the nature of the assessment;

(b) A statement of the mental condition of the defendant; and

(c) A statement regarding the defendant's mental capacity to engage in reasoned choices of legal strategies and options.

(3) If the competency assessment cannot be conducted because the defendant is unwilling to participate, the report must so state and must include, if possible, an opinion as to whether the unwillingness of the defendant is the result of a mental condition affecting the defendant's mental capacity to engage in reasoned choices of legal strategies and options.

(4) The [Department of Human Services] **authority** shall file three copies of the report of the competency assessment with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

SECTION 97. ORS 137.466 is amended to read:

137.466. (1) If the court has ordered the [Department of Human Services] **Oregon Health Authority** to perform a competency assessment of the defendant under ORS 137.464 and the assessment has been completed, the court shall determine the issue of the defendant's mental capacity to engage in reasoned choices of legal strategies and options. If neither the state nor counsel for the defendant contests the finding of the report filed under ORS 137.464, the court may make the determination of the defendant's mental capacity to engage in reasoned choices of legal strategies and options on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence at the hearing, the party contesting the finding has the right to summon and to cross-examine the psychiatrist or psychologist who submitted the report and to offer evidence on the issue. Either party may introduce other evidence regarding the defendant's mental capacity to engage in reasoned choices of legal strategies and options.

(2) If the court determines that, due to mental incapacity, the defendant cannot engage in reasoned choices of legal strategies and options, the court shall continue the appointment of counsel provided under ORS 137.463.

(3) No appeal may be taken from an order issued pursuant to this section.

SECTION 98. ORS 137.658 is amended to read:

137.658. (1) The chairperson of the Oregon Criminal Justice Commission may create any committees within the commission as the chairperson may think necessary. Persons who are not com-

mission members may be appointed as members to serve on the committees with the approval of the commission.

(2) The chairperson shall appoint members of committees created under this section in such a manner as to ensure representation from all segments of the criminal justice system that are affected by the work of the committee. In selecting members for committee assignments, the chairperson shall consider, but is not limited to, representatives from the following:

- (a) The Attorney General;
- (b) The Director of the Department of Corrections;
- (c) The chairperson of the State Board of Parole and Post-Prison Supervision;
- (d) The Superintendent of State Police;
- (e) The chief administrative employee of the Psychiatric Security Review Board;
- (f) The Director of Human Services;
- (g) The Director of the Oregon Health Authority;**
- [(g)] **(h)** The Director of the Oregon Youth Authority;
- [(h)] **(i)** Trial judges;
- [(i)] **(j)** Judges of the Oregon Supreme Court or Court of Appeals;
- [(j)] **(k)** Majority and minority parties of the House of Representatives and the Senate;
- [(k)] **(L)** District attorneys;
- [(L)] **(m)** Criminal defense attorneys;
- [(m)] **(n)** County sheriffs;
- [(n)] **(o)** County commissioners;
- [(o)] **(p)** County community corrections directors;
- [(p)] **(q)** Chiefs of police;
- [(q)] **(r)** Victims of crime;
- [(r)] **(s)** The public at large;

[(s)] **(t)** The director of a nonprofit entity created for the purpose of increasing understanding of the adult and juvenile justice systems and promotion of effective policies for prevention and control of crime; and

[(t)] **(u)** Private contract providers.

SECTION 99. ORS 144.102 is amended to read:

144.102. (1) The State Board of Parole and Post-Prison Supervision or local supervisory authority responsible for correctional services for a person shall specify in writing the conditions of post-prison supervision imposed under ORS 144.096. A copy of the conditions shall be given to the person upon release from prison or jail.

(2) The board or the supervisory authority shall determine, and may at any time modify, the conditions of post-prison supervision, which may include, among other conditions, that the person shall:

- (a) Comply with the conditions of post-prison supervision as specified by the board or supervisory authority.
- (b) Be under the supervision of the Department of Corrections and its representatives or other supervisory authority and abide by their direction and counsel.
- (c) Answer all reasonable inquiries of the board, the department or the supervisory authority.
- (d) Report to the parole officer as directed by the board, the department or the supervisory authority.
- (e) Not own, possess or be in control of any weapon.
- (f) Respect and obey all municipal, county, state and federal laws.
- (g) Understand that the board or supervisory authority may, at its discretion, punish violations of post-prison supervision.

(h) Attend a victim impact treatment session in a county that has a victim impact program. If the board or supervisory authority requires attendance under this paragraph, the board or supervisory authority may require the person, as an additional condition of post-prison supervision, to pay a reasonable fee to the victim impact program to offset the cost of the person's participation. The

board or supervisory authority may not order a person to pay a fee in excess of \$5 under this paragraph.

(i) If required to report as a sex offender under ORS 181.595, report with the Department of State Police, a chief of police, a county sheriff or the supervising agency:

(A) When supervision begins;

(B) Within 10 days of a change in residence;

(C) Once each year within 10 days of the person's date of birth;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(E) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(3)(a) The board or supervisory authority may establish special conditions as the board or supervisory authority determines necessary because of the individual circumstances of the person on post-prison supervision.

(b) If the person is on post-prison supervision following conviction of a sex crime, as defined in ORS 181.594, the board or supervisory authority shall include all of the following as special conditions of the person's post-prison supervision:

(A) Agreement to comply with any curfew set by the board, the supervisory authority or the supervising officer.

(B) A prohibition against contacting a person under 18 years of age without the prior written approval of the board, supervisory authority or supervising officer.

(C) A prohibition against being present more than one time, without the prior written approval of the board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate.

(D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board, supervisory authority or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.

(E) A prohibition against working or volunteering at a school, child care center, park, playground or other place where persons under 18 years of age regularly congregate.

(F) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.

(G) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board, supervisory authority or supervising officer.

(H) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.

(I) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board or supervisory authority if the representative has reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision will be found.

(J) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of post-prison supervision.

(K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.

(L) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

(M) A prohibition against residing in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board, supervisory authority or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or the director of the supervisory authority, or a designee of the board or director. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subparagraph:

(i) "Dwelling" has the meaning given that term in ORS 469.160.

(ii) "Dwelling" does not include a residential treatment facility or a halfway house.

(iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(c)(A) If the person is on post-prison supervision following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board or supervisory authority, if requested by the victim, shall include as a special condition of the person's post-prison supervision that the person not reside within three miles of the victim unless:

(i) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county under subsection (6) of this section;

(ii) The person demonstrates to the board or supervisory authority by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(iii) The person demonstrates to the board or supervisory authority by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the post-prison supervision; or

(iv) The person resides in a halfway house. As used in this sub-subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(B) A victim may request imposition of the special condition of post-prison supervision described in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document.

(C) If the board or supervisory authority imposes the special condition of post-prison supervision described in this paragraph and if at any time during the period of post-prison supervision the victim moves to within three miles of the person's residence, the board or supervisory authority may not require the person to change the person's residence in order to comply with the special condition of post-prison supervision.

(4)(a) The board or supervisory authority may require the person to pay, as a condition of post-prison supervision, any compensatory fines, restitution or attorney fees:

(A) As determined, imposed or required by the sentencing court; or

(B) When previously required as a condition of any type of supervision that is later revoked.

(b) The board may require a person to pay restitution as a condition of post-prison supervision imposed for an offense other than the offense for which the restitution was ordered if the person:

(A) Was ordered to pay restitution as a result of another conviction; and

(B) Has not fully paid the restitution by the time the person has completed the period of post-prison supervision imposed for the offense for which the restitution was ordered.

(5) A person's failure to apply for or accept employment at any workplace where there is a labor dispute in progress does not constitute a violation of the conditions of post-prison supervision. As used in this subsection, "labor dispute" has the meaning given that term in ORS 662.010.

(6)(a) When a person is released from imprisonment on post-prison supervision, the board shall order, as a condition of post-prison supervision, that the person reside for the first six months after

release in the county where the person resided at the time of the offense that resulted in the imprisonment.

(b) Upon motion of the board, the person, a victim or a district attorney, the board may waive the residency requirement only after making a finding that one of the following conditions has been met:

(A) The person provides proof of employment with no set ending date in a county other than the established county of residence;

(B) The person is found to pose a significant danger to a victim of the person's crime, or a victim or victim's family is found to pose a significant danger to the person residing in the established county of residence;

(C) The person has a spouse or biological or adoptive family residing in a county other than the established county of residence who will be materially significant in aiding in the rehabilitation of the person and in the success of the post-prison supervision;

(D) As another condition of post-prison supervision, the person is required to participate in a treatment program that is not available in the established county of residence;

(E) The person desires to be released to another state; or

(F) The board finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.

(c)(A) The board shall determine the county where the person resided at the time of the offense by establishing the person's last address at the time of the offense. In making its determination, the board shall examine all of the following:

(i) An Oregon driver license, regardless of its validity;

(ii) Records maintained by the Department of Revenue;

(iii) Records maintained by the Department of State Police bureau of criminal identification;

(iv) Records maintained by the Department of Human Services; *[and]*

(v) Records maintained by the Department of Corrections[.]; **and**

(vi) Records maintained by the Oregon Health Authority.

(B) When the person did not have an identifiable address of record at the time of the offense, the person is considered to have resided in the county where the offense occurred.

(C) If the person is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

(D) In determining the person's county of residence for purposes of this subsection, the board may not consider offenses committed by the person while the person was incarcerated in a Department of Corrections facility.

(7) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 181.594.

SECTION 100. ORS 144.270 is amended to read:

144.270. (1) The State Board of Parole and Post-Prison Supervision, in releasing a person on parole, shall specify in writing the conditions of the parole and a copy of such conditions shall be given to the person paroled.

(2) The board shall determine, and may at any time modify, the conditions of parole, which may include, among other conditions, that the parolee shall:

(a) Accept the parole granted subject to all terms and conditions specified by the board.

(b) Be under the supervision of the Department of Corrections and its representatives and abide by their direction and counsel.

(c) Answer all reasonable inquiries of the board or the parole officer.

(d) Report to the parole officer as directed by the board or parole officer.

(e) Not own, possess or be in control of any weapon.

(f) Respect and obey all municipal, county, state and federal laws.

(g) Understand that the board may, in its discretion, suspend or revoke parole if it determines that the parole is not in the best interest of the parolee, or in the best interest of society.

(3)(a) The board may establish such special conditions as it determines are necessary because of the individual circumstances of the parolee.

(b) If the person is on parole following conviction of a sex crime, as defined in ORS 181.594, the board shall include all of the following as special conditions of the person's parole:

(A) Agreement to comply with any curfew set by the board or the supervising officer.

(B) A prohibition against contacting a person under 18 years of age without the prior written approval of the board or supervising officer.

(C) A prohibition against being present more than one time, without the prior written approval of the board or supervising officer, at a place where persons under 18 years of age regularly congregate.

(D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.

(E) A prohibition against working or volunteering at a school, child care center, park, playground or other place where persons under 18 years of age regularly congregate.

(F) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.

(G) A prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board or supervising officer.

(H) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing any sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.

(I) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board if the representative has reasonable grounds to believe that evidence of a violation of a condition of parole will be found.

(J) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of parole.

(K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board or supervising officer.

(L) A prohibition against using a post-office box unless approved by the board or supervising officer.

(M) A prohibition against residing in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or a designee of the board. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subparagraph:

(i) "Dwelling" has the meaning given that term in ORS 469.160.

(ii) "Dwelling" does not include a residential treatment facility or a halfway house.

(iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(c)(A) If the person is on parole following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board, if requested by the victim, shall include as a special condition of the person's parole that the person not reside within three miles of the victim unless:

(i) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county under subsection (5) of this section;

(ii) The person demonstrates to the board by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(iii) The person demonstrates to the board by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the parole; or

(iv) The person resides in a halfway house. As used in this sub-subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(B) A victim may request imposition of the special condition of parole described in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document.

(C) If the board imposes the special condition of parole described in this paragraph and if at any time during the period of parole the victim moves to within three miles of the parolee's residence, the board may not require the parolee to change the parolee's residence in order to comply with the special condition of parole.

(4) It is not a cause for revocation of parole that the parolee failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning given that term in ORS 662.010.

(5)(a) When the board grants an inmate parole from the custody of the Department of Corrections, the board shall order, as a condition of parole, that the inmate reside for the first six months in the county where the inmate resided at the time of the offense that resulted in the imprisonment.

(b) Upon motion of the board, an inmate, a victim or a district attorney, the board may waive the residency requirement only after making a finding that one of the following conditions has been met:

(A) The inmate provides proof of a job with no set ending date in a county other than the established county of residence;

(B) The inmate is found to pose a significant danger to the victim of the offender's crime, or the victim or victim's family is found to pose a significant danger to the inmate residing in the county of residence;

(C) The inmate has a spouse or biological or adoptive family residing in other than the county of residence who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole;

(D) As another condition of parole, the inmate is required to participate in a treatment program that is not available or located in the county of residence;

(E) The inmate desires to be paroled to another state; or

(F) The board finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.

(c)(A) For purposes of this subsection, "residency" means the last address at the time of the offense, as established by an examination of all of the following:

(i) An Oregon driver license, regardless of its validity;

(ii) Records maintained by the Department of Revenue;

(iii) Records maintained by the Department of State Police bureau of criminal identification;

(iv) Records maintained by the Department of Human Services; *[and]*

(v) Records maintained by the Department of Corrections[.]; **and**

(vi) Records maintained by the Oregon Health Authority.

(B) When an inmate did not have one identifiable address of record at the time of the offense, the inmate shall be considered to have resided in the county where the offense occurred.

(C) If the inmate is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

(D) If the inmate is being rereleased after revocation of parole, the county of residence shall be determined according to the date of the arrest resulting in a conviction of the underlying offense.

(E) In determining the inmate's county of residence, a conviction for an offense that the inmate committed while incarcerated in a state corrections institution may not be considered.

(6) When the board grants an inmate parole from the custody of the Department of Corrections and if the inmate is required to report as a sex offender under ORS 181.595, the board, as a condition of parole, shall order the inmate to report with the Department of State Police, a chief of police, a county sheriff or the supervising agency:

(a) When supervision begins;

(b) Within 10 days of a change in residence;

(c) Once each year within 10 days of the inmate's date of birth;

(d) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(e) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(7) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 181.594.

SECTION 101. ORS 161.315 is amended to read:

161.315. Upon filing of notice or the introduction of evidence by the defendant as provided in ORS 161.309 (3), the state shall have the right to have at least one psychiatrist or licensed psychologist of its selection examine the defendant. The state shall file notice with the court of its intention to have the defendant examined. Upon filing of the notice, the court, in its discretion, may order the defendant committed to a state institution or any other suitable facility, if the defendant is 18 years of age or older, for observation and examination as the court may designate for a period not to exceed 30 days. If the defendant is under 18 years of age, upon filing of the notice, the court, in its discretion, may order the defendant committed to a secure intensive community inpatient facility designated by the [*Department of Human Services*] **Oregon Health Authority** for observation and examination as the court may designate for a period not to exceed 30 days. If the defendant objects to the examiner chosen by the state, the court for good cause shown may direct the state to select a different examiner.

SECTION 102. ORS 161.327 is amended to read:

161.327. (1)(a) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that the person would have been guilty of a felony, or of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another, the court shall order that a psychiatric or psychological evaluation be performed and a report of the evaluation be provided to the court if an evaluation was not performed or a report was not provided to the court prior to trial. Upon receipt of the evaluation, the court shall order that the person be placed under the jurisdiction of the Psychiatric Security Review Board for care and treatment if the court finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others requiring commitment to:

(A) A state hospital designated by the [*Department of Human Services*] **Oregon Health Authority** if the person is at least 18 years of age; or

(B) A secure intensive community inpatient facility designated by the [*Department of Human Services*] **authority** if the person is under 18 years of age.

(b) The period of jurisdiction of the board is equal to the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

(c) When a court orders a psychiatric or psychological evaluation of a financially eligible person under this subsection, the court shall order the public defense services executive director to pay a reasonable fee for the evaluation from funds available for the purpose.

(2) The court shall determine whether the person should be committed to a state hospital, or to a secure intensive community inpatient facility, designated by the [*Department of Human Services*] **authority** or conditionally released pending any hearing before the board as follows:

(a) If the court finds that the person presents a substantial danger to others and is not a proper subject for conditional release, the court shall order the person committed to a state hospital designated by the [*Department of Human Services*] **authority** if the person is at least 18 years of age, or to a secure intensive community inpatient facility designated by the [*Department of Human Services*] **authority** if the person is under 18 years of age, for custody, care and treatment pending hearing before the board in accordance with ORS 161.341 to 161.351.

(b) If the court finds that the person presents a substantial danger to others but that the person can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the court may order the person conditionally released, subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the person or agency designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security Review Board. The person or agency designated as supervisor shall be required to report in writing no less than once per month to the board concerning the supervised person's compliance with the conditions of release.

(3) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others.

(4) In determining whether a person should be conditionally released, the court may order evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

(5) In determining whether a person should be committed to a state hospital or to a secure intensive community inpatient facility or conditionally released, the court shall have as its primary concern the protection of society.

(6) Upon placing a person on conditional release, the court shall notify the board in writing of the court's conditional release order, the supervisor appointed, and all other conditions of release, and the person shall be on conditional release pending hearing before the board in accordance with ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this section, the court's jurisdiction over the person is terminated and the board assumes jurisdiction over the person.

(7) An order of the court under this section is a final order appealable by the person found guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice of an appeal under this section shall be served and filed within 90 days after the order appealed from is entered in the register. The person shall be entitled on appeal to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and the compensation for counsel and costs and expenses of the person necessary to the appeal shall be determined and paid as provided in ORS 138.500.

(8) Upon placing a person under the jurisdiction of the board, the court shall notify the person of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336 (7) and 161.341 (4).

SECTION 103. ORS 161.336 is amended to read:

161.336. (1) If the Psychiatric Security Review Board determines that the person presents a substantial danger to others but can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the board may

order the person conditionally released, subject to those supervisory orders of the board as are in the best interests of justice, the protection of society and the welfare of the person. The board may designate any person or state, county or local agency the board considers capable of supervising the person upon release, subject to those conditions as the board directs in the order for conditional release. Prior to the designation, the board shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the board. After receiving an order entered under this section, the person or agency designated shall assume supervision of the person pursuant to the direction of the board.

(2) Conditions of release contained in orders entered under this section may be modified from time to time and conditional releases may be terminated by order of the board as provided in ORS 161.351.

(3) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others. The person may be continued on conditional release by the board as provided in this section.

(4)(a) As a condition of release, the board may require the person to report to any state or local mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is recommended, the board may order the person, as a condition of release, to cooperate with and accept the treatment from the facility.

(b) The facility to which the person has been referred for evaluation shall perform the evaluation and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, it shall include its recommendations for treatment in the report to the board.

(c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a regular basis concerning the progress of the person.

(d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS 192.501 to 192.505.

(e) The facility shall comply with any other conditions of release prescribed by order of the board.

(5) If at any time while the person is under the jurisdiction of the board it appears to the board or its chairperson that the person has violated the terms of the conditional release or that the mental health of the individual has changed, the board or its chairperson may order the person returned for evaluation or treatment to a state hospital designated by the *[Department of Human Services]* **Oregon Health Authority** if the person is at least 18 years of age, or to a secure intensive community inpatient facility designated by the *[Department of Human Services]* **authority** if the person is under 18 years of age. A written order of the board, or its chairperson on behalf of the board, is sufficient warrant for any law enforcement officer to take into custody such person and transport the person accordingly. A sheriff, municipal police officer, constable, parole and probation officer, prison official or other peace officer shall execute the order, and the person shall be returned as soon as practicable to the custody of the *[Department of Human Services]* **authority**. Within 20 days following the return of the person to the custody of the *[Department of Human Services]* **authority**, the board shall conduct a hearing. Notice of the time and place of the hearing shall be given to the person, the attorney representing the person and the Attorney General. The board may continue the person on conditional release or, if it finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others and cannot be adequately controlled if conditional release is continued, it may order the person committed to a state hospital designated by the *[Department of Human Services]* **authority** if the person is at least 18 years of age, or to a secure intensive community inpatient facility designated by the *[Department of Human Services]* **authority** if the person is under 18 years of age. The state must prove by a preponderance of the evidence the person's unfitness for conditional release. A

person in custody pursuant to this subsection has the same rights as any person appearing before the board pursuant to ORS 161.346.

(6) The community mental health [*and developmental disabilities*] program director, the director of the facility providing treatment to a person on conditional release, any peace officer or any person responsible for the supervision of a person on conditional release may take a person on conditional release into custody or request that the person be taken into custody if there is reasonable cause to believe the person is a substantial danger to others because of mental disease or defect and that the person is in need of immediate care, custody or treatment. Any person taken into custody pursuant to this subsection shall be transported as soon as practicable to a state hospital designated by the [*Department of Human Services*] **authority** if the person is at least 18 years of age, or to a secure intensive community inpatient facility designated by the [*Department of Human Services*] **authority** if the person is under 18 years of age. A person taken into custody under this subsection has the same rights as any person appearing before the board pursuant to ORS 161.346.

(7)(a) Any person conditionally released under this section may apply to the board for discharge from or modification of an order of conditional release on the ground that the person is no longer affected by mental disease or defect or, if still so affected, no longer presents a substantial danger to others and no longer requires supervision, medication, care or treatment. Notice of the hearing on an application for discharge or modification of an order of conditional release shall be made to the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a preponderance of the evidence the applicant's fitness for discharge or modification of the order of conditional release. Applications by the person for discharge or modification of conditional release shall not be filed more often than once every six months.

(b) Upon application by any person or agency responsible for supervision or treatment pursuant to an order of conditional release, the board shall conduct a hearing to determine if the conditions of release shall be continued, modified or terminated. The application shall be accompanied by a report setting forth the facts supporting the application.

(8) The total period of commitment and conditional release ordered pursuant to this section may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

(9) The board shall maintain and keep current the medical, social and criminal history of all persons committed to its jurisdiction. The confidentiality of records maintained by the board shall be determined pursuant to ORS 192.501 to 192.505.

(10) In determining whether a person should be committed to a state hospital or to a secure intensive community inpatient facility, conditionally released or discharged, the board shall have as its primary concern the protection of society.

SECTION 104. ORS 161.341 is amended to read:

161.341. (1) If the Psychiatric Security Review Board finds, upon its initial hearing, that the person presents a substantial danger to others and is not a proper subject for conditional release, the board shall order the person committed to, or retained in, a state hospital designated by the [*Department of Human Services*] **Oregon Health Authority** if the person is at least 18 years of age, or to a secure intensive community inpatient facility designated by the [*Department of Human Services*] **authority** if the person is under 18 years of age, for custody, care and treatment. The period of commitment ordered by the board may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

(2) If at any time after the commitment of a person to a state hospital, or to a secure intensive community inpatient facility, designated by the [*Department of Human Services*] **authority** under this section, the superintendent of the hospital or the director of the secure intensive community inpatient facility is of the opinion that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others or that the person continues to be affected by mental disease or defect and continues to be a danger to others, but that the person can be controlled with proper care, medication, supervision and treatment if conditionally released, the superintendent or director shall apply to the board for an order of discharge or conditional release.

The application shall be accompanied by a report setting forth the facts supporting the opinion of the superintendent or director. If the application is for conditional release, the application must also be accompanied by a verified conditional release plan. The board shall hold a hearing on the application within 60 days of its receipt. Not less than 20 days prior to the hearing before the board, copies of the report shall be sent to the Attorney General.

(3) The attorney representing the state may choose a psychiatrist or licensed psychologist to examine the person prior to the initial or any later decision by the board on discharge or conditional release. The results of the examination shall be in writing and filed with the board, and shall include, but need not be limited to, an opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled with treatment as a condition of release.

(4) Any person who has been committed to a state hospital, or to a secure intensive community inpatient facility, designated by the [Department of Human Services] **authority** for custody, care and treatment or another person acting on the person's behalf may apply to the board for an order of discharge or conditional release upon the grounds:

(a) That the person is no longer affected by mental disease or defect;

(b) If so affected, that the person no longer presents a substantial danger to others; or

(c) That the person continues to be affected by a mental disease or defect and would continue to be a danger to others without treatment, but that the person can be adequately controlled and given proper care and treatment if placed on conditional release.

(5) When application is made under subsection (4) of this section, the board shall require that a report from the superintendent of the hospital or the director of the secure intensive community inpatient facility be prepared and transmitted as provided in subsection (2) of this section. The applicant must prove by a preponderance of the evidence the applicant's fitness for discharge or conditional release under the standards of subsection (4) of this section, unless more than two years has passed since the state had the burden of proof on that issue, in which case the state shall have the burden of proving by a preponderance of the evidence the applicant's lack of fitness for discharge or conditional release. Applications for discharge or conditional release under subsection (4) of this section shall not be filed more often than once every six months commencing with the date of the initial board hearing.

(6) The board is not required to hold a hearing on a first application under subsection (4) of this section any sooner than 90 days after the initial hearing. However, hearings resulting from any subsequent requests shall be held within 60 days of the filing of the application.

(7)(a) In no case shall any person committed by the court under ORS 161.327 to a state hospital, or to a secure intensive community inpatient facility, designated by the [Department of Human Services] **authority** be held in the hospital or facility for more than 90 days from the date of the court's commitment order without an initial hearing before the board to determine whether the person should be conditionally released or discharged.

(b) In no case shall a person be held pursuant to this section for a period of time exceeding two years without a hearing before the board to determine whether the person should be conditionally released or discharged.

SECTION 105. ORS 161.346 is amended to read:

161.346. (1) The Psychiatric Security Review Board shall conduct hearings upon any application for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341 or 161.351 and as otherwise required by ORS 161.336 to 161.351 and shall make findings on the issues before it which may include:

(a) If the board finds that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others, the board shall order the person discharged from commitment or from conditional release.

(b) If the board finds that the person is still affected by a mental disease or defect and is a substantial danger to others, but can be controlled adequately if conditionally released with treat-

ment as a condition of release, the board shall order the person conditionally released as provided in ORS 161.336.

(c) If the board finds that the person has not recovered from the mental disease or defect and is a substantial danger to others and cannot adequately be controlled if conditionally released on supervision, the board shall order the person committed to, or retained in, a state hospital designated by the [*Department of Human Services*] **Oregon Health Authority** if the person is at least 18 years of age, or a secure intensive community inpatient facility designated by the [*Department of Human Services*] **authority** if the person is under 18 years of age, for care, custody and treatment.

(2) At any time, the board may appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the board. Reports filed with the board pursuant to the examination shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents a substantial danger to others, and whether the person could be adequately controlled with treatment as a condition of release. To facilitate the examination of the person, the board may order the person placed in the temporary custody of any state hospital or other suitable facility.

(3) The board may make the determination regarding discharge or conditional release based upon the written reports submitted pursuant to this section. If any member of the board desires further information from the examining psychiatrist or licensed psychologist who submitted the report, these persons shall be summoned by the board to give testimony. The board shall consider all evidence available to it which is material, relevant and reliable regarding the issues before the board. Such evidence may include but is not limited to the record of trial, the information supplied by the attorney representing the state or by any other interested party, including the person, and information concerning the person's mental condition and the entire psychiatric and criminal history of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(4) The board shall furnish to the person about whom the hearing is being conducted, the attorney representing the person, the Attorney General, the district attorney and the court or department of the county from which the person was committed written notice of any hearing pending under this section within a reasonable time prior to the hearing. The notice shall include:

(a) The time, place and location of the hearing.

(b) The nature of the hearing and the specific action for which a hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved.

(c) A statement of the authority and jurisdiction under which the hearing is to be held.

(d) A statement of all rights under subsection (6) of this section.

(5) Prior to the commencement of a hearing, the board or presiding officer shall serve personally or by mail a written notice to each party as provided in ORS 183.413 (2).

(6) At the hearing, the person about whom the hearing is being held shall have the right:

(a) To appear at all proceedings held pursuant to this section, except board deliberations.

(b) To cross-examine all witnesses appearing to testify at the hearing.

(c) To subpoena witnesses and documents as provided in ORS 161.395.

(d) To be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if financially eligible, to have suitable counsel appointed at state expense.

(e) To examine all information, documents and reports which the board considers. If then available to the board, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

(7) A record shall be kept of all hearings before the board, except board deliberations.

(8) Upon request of any party before the board, or on its own motion, the board may continue a hearing for a reasonable period not to exceed 60 days to obtain additional information or testimony or for other good cause shown.

(9) Within 15 days following the conclusion of the hearing, the board shall provide to the person, the attorney representing the person, the Attorney General or other attorney representing the state, if any, written notice of the board's decision.

(10) The burden of proof on all issues at hearings of the board shall be by a preponderance of the evidence.

(11) If the board determines that the person about whom the hearing is being held is financially eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall be an attorney who satisfies the professional qualifications established by the Public Defense Services Commission under ORS 151.216. The public defense services executive director shall determine and allow fair compensation for counsel appointed under this subsection and the reasonable expenses of the person in respect to the hearing. Compensation payable to appointed counsel shall not be less than the applicable compensation level established under ORS 151.216. The compensation and expenses so allowed shall be paid by the public defense services executive director from funds available for the purpose.

(12) The Attorney General may represent the state at contested hearings before the board unless the district attorney of the county from which the person was committed elects to represent the state. The district attorney of the county from which the person was committed shall cooperate with the Attorney General in securing the material necessary for presenting a contested hearing before the board. If the district attorney elects to represent the state, the district attorney shall give timely written notice of such election to the Attorney General, the board and the attorney representing the person.

SECTION 106. ORS 161.365 is amended to read:

161.365. (1) Whenever the court has reason to doubt the defendant's fitness to proceed by reason of incapacity as defined in ORS 161.360, the court may call to its assistance in reaching its decision any witness and may appoint a psychiatrist or psychologist to examine the defendant and advise the court.

(2) If the court determines the assistance of a psychiatrist or psychologist would be helpful, the court may order the defendant to be committed for the purpose of an examination for a period not exceeding 30 days to a state mental hospital designated by the [*Department of Human Services*] **Oregon Health Authority** if the defendant is at least 18 years of age, or to a secure intensive community inpatient facility designated by the [*Department of Human Services*] **authority** if the defendant is under 18 years of age. The report of each examination shall include, but is not necessarily limited to, the following:

- (a) A description of the nature of the examination;
- (b) A statement of the mental condition of the defendant; and
- (c) If the defendant suffers from a mental disease or defect, an opinion as to whether the defendant is incapacitated within the definition set out in ORS 161.360.

(3) Except when the defendant and the court both request to the contrary, the report may not contain any findings or conclusions as to whether the defendant as a result of mental disease or defect was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act charged.

(4) If the examination by the psychiatrist or psychologist cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect affecting capacity to proceed.

(5) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for defendant.

(6) When upon motion of the court or a financially eligible defendant, the court has ordered a psychiatric or psychological examination of the defendant, a county or justice court shall order the

county to pay, and a circuit court shall order the public defense services executive director to pay from funds available for the purpose:

(a) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psychologist in private practice; and

(b) All costs including transportation of the defendant if the examination is conducted by a psychiatrist or psychologist in the employ of the [Department of Human Services] **Oregon Health Authority** or a community mental health [and developmental disabilities] program established under ORS 430.610 to 430.670.

(7) When such an examination is ordered at the request or with the acquiescence of a defendant who is determined not to be financially eligible, the examination shall be performed at the defendant's expense. When such an examination is ordered at the request of the prosecution, the county shall pay for the expense of the examination.

SECTION 107. ORS 161.370 is amended to read:

161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in subsection (12) of this section, and the court shall commit the defendant to the custody of the superintendent of a state mental hospital designated by the [Department of Human Services] **Oregon Health Authority** if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the [Department of Human Services] **authority** if the defendant is under 18 years of age, or shall release the defendant on supervision for as long as such unfitness shall endure. The court may release the defendant on supervision if it determines that care other than commitment for incapacity to stand trial would better serve the defendant and the community. It may place conditions which it deems appropriate on the release, including the requirement that the defendant regularly report to the [Department of Human Services] **authority** or a community mental health [and developmental disabilities] program for examination to determine if the defendant has regained capacity to stand trial. When the court, on its own motion or upon the application of the superintendent of the hospital or director of the secure intensive community inpatient facility in which the defendant is committed, a person examining the defendant as a condition of release on supervision, or either party, determines, after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release of the defendant on supervision that it would be unjust to resume the criminal proceeding, the court on motion of either party may dismiss the charge and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170 or 427.235 to 427.290.

(3) The superintendent of a state hospital or director of a secure intensive community inpatient facility shall cause the defendant to be evaluated within 60 days from the defendant's delivery into the superintendent's or director's custody, for the purpose of determining whether there is a substantial probability that, in the foreseeable future, the defendant will have the capacity to stand trial.

(4) In addition, the superintendent or director shall:

(a) Immediately notify the committing court if the defendant, at any time, gains or regains the capacity to stand trial or will never have the capacity to stand trial.

(b) Within 90 days of the defendant's delivery into the superintendent's or director's custody, notify the committing court that:

(A) The defendant has the present capacity to stand trial;
(B) There is no substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial; or

(C) There is a substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial. If such a probability exists, the superintendent or director shall give the court an estimate of the time in which the defendant, with appropriate treatment, is expected to gain or regain capacity.

(5) If the superintendent or director determines that there is a substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the court otherwise orders, the defendant shall remain in the superintendent's or director's custody where the defendant shall receive treatment designed for the purpose of enabling the defendant to gain or regain capacity. In keeping with the notice requirement under subsection (4)(b) of this section, the superintendent or director shall, for the duration of the defendant's period of commitment, submit a progress report to the committing court, concerning the defendant's capacity or incapacity, at least once every 180 days as measured from the date of the defendant's delivery into the superintendent's or director's custody.

(6) A defendant who remains committed under subsection (5) of this section shall be discharged within a period of time that is reasonable for making a determination concerning whether or not, and when, the defendant may gain or regain capacity. However, regardless of the number of charges with which the defendant is accused, in no event shall the defendant be committed for longer than whichever of the following, measured from the defendant's initial custody date, is shorter:

(a) Three years; or

(b) A period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted.

(7) The superintendent or director shall notify the committing court of the defendant's impending discharge 30 days before the date on which the superintendent or director is required to discharge the defendant under subsection (6) of this section.

(8) When the committing court receives a notice from the superintendent or director under either subsection (4) or (7) of this section concerning the defendant's progress or lack thereof, the committing court shall determine after a hearing, if a hearing is requested, whether the defendant presently has the capacity to stand trial.

(9) If under subsection (8) of this section the court determines that the defendant lacks the capacity to stand trial, the court shall further determine whether there is a substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant is entitled to discharge under subsection (6) of this section. If the court determines that there is no substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge under subsection (6) of this section, the court shall dismiss, without prejudice, all charges against the defendant and:

(a) Order that the defendant be discharged; or

(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

(10) All notices required under this section shall be filed with the clerk of the court and delivered to both the district attorney and the counsel for the defendant.

(11) If the defendant regains fitness to proceed, the term of any sentence received by the defendant for conviction of the crime charged shall be reduced by the amount of time the defendant was committed under this section to the custody of a state mental hospital, or to the custody of a secure intensive community inpatient facility, designated by the *[Department of Human Services]* **Oregon Health Authority**.

(12) The fact that the defendant is unfit to proceed does not preclude any objection through counsel and without the personal participation of the defendant on the grounds that the indictment is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon

any other ground at the discretion of the court which the court deems susceptible of fair determination prior to trial.

SECTION 108. ORS 161.375 is amended to read:

161.375. (1) When a patient, who has been placed at the Oregon State Hospital for evaluation, care, custody and treatment under the jurisdiction of the Psychiatric Security Review Board or by court order under ORS 161.315, 161.365 or 161.370, has escaped or is absent without authorization from the Oregon State Hospital or from the custody of any person in whose charge the superintendent has placed the patient, the superintendent may order the arrest and detention of the patient.

(2) When a patient, who has been placed at a secure intensive community inpatient facility for evaluation, care, custody and treatment under the jurisdiction of the Psychiatric Security Review Board or by court order under ORS 161.315, 161.365, 161.370 or 419C.527, has escaped or is absent without authorization from the facility or from the custody of any person in whose charge the director of the facility has placed the patient, the director of the facility shall notify the Director of [Human Services. *The Director of Human Services*] **the Oregon Health Authority. The Director of the Oregon Health Authority** may order the arrest and detention of the patient.

(3) The superintendent or the [Director of Human Services] **Director of the Oregon Health Authority** may issue an order under this section based upon a reasonable belief that grounds exist for issuing the order. When reasonable, the superintendent or the [Director of Human Services] **Director of the Oregon Health Authority** shall investigate to ascertain whether such grounds exist.

(4) Any order issued by the superintendent or the [Director of Human Services] **Director of the Oregon Health Authority** as authorized by this section constitutes full authority for the arrest and detention of the patient and all laws applicable to warrant or arrest apply to the order. An order issued by the superintendent or the [Director of Human Services] **Director of the Oregon Health Authority** under this section expires 72 hours after being signed by the superintendent or the [Director of Human Services] **Director of the Oregon Health Authority**.

(5) As used in this section, "superintendent" means the superintendent of the Oregon State Hospital or the superintendent's authorized representative.

SECTION 109. ORS 161.385 is amended to read:

161.385. (1) There is hereby created a Psychiatric Security Review Board consisting of 10 members appointed by the Governor and subject to confirmation by the Senate under section 4, Article III of the Oregon Constitution.

(2) The membership of the board may not include any district attorney, deputy district attorney or public defender. The Governor shall appoint:

(a) A psychiatrist experienced in the criminal justice system and not otherwise employed on a full-time basis by the [Department of Human Services] **Oregon Health Authority** or a community mental health [and developmental disabilities] program;

(b) A licensed psychologist experienced in the criminal justice system and not otherwise employed on a full-time basis by the [Department of Human Services] **authority** or a community mental health [and developmental disabilities] program;

(c) A member with substantial experience in the processes of parole and probation;

(d) A lawyer with substantial experience in criminal trial practice;

(e) A psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry who is experienced in the juvenile justice system and not employed on a full-time basis by the [Department of Human Services] **authority** or a community mental health [and developmental disabilities] program;

(f) A licensed psychologist who is experienced in child psychology and the juvenile justice system and not employed on a full-time basis by the [Department of Human Services] **authority** or a community mental health [and developmental disabilities] program;

(g) A member with substantial experience in the processes of juvenile parole and probation;

(h) A lawyer with substantial experience in juvenile law practice; and

(i) Two members of the general public.

(3) The term of office of each member is four years. The Governor at any time may remove any member for inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board not otherwise employed full-time by the state shall be paid on a per diem basis an amount equal to \$289.22, adjusted according to the executive pay plan for the biennium, for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employees, the member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties.

(5) Subject to any applicable provision of the State Personnel Relations Law, the board may hire employees to aid it in performing its duties.

(6) The board consists of two five-member panels. The adult panel is responsible for persons placed under the board's jurisdiction under ORS 161.327 and 419C.544 and consists of those members appointed under subsection (2)(a) to (d) of this section and one of the public members. The juvenile panel is responsible for young persons placed under the board's jurisdiction under ORS 419C.529 and consists of those members appointed under subsection (2)(e) to (h) of this section and the other public member.

(7)(a) Each panel shall select one of its members as chairperson to serve for a one-year term with such duties and powers as the panel determines.

(b) A majority of the voting members of a panel constitutes a quorum for the transaction of business of the panel.

(8) Each panel shall meet at least twice every month, unless the chairperson determines that there is not sufficient business before the panel to warrant a meeting at the scheduled time. The panel shall also meet at other times and places specified by the call of the chairperson or of a majority of the members of the panel.

(9)(a) When a person over whom a panel of the board exercises its jurisdiction is adversely affected or aggrieved by a final order of the panel, the person is entitled to judicial review of the final order. The person is entitled on judicial review to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed by the reviewing court in the manner provided in ORS 138.500 (1). If the person is financially eligible, the public defense services executive director shall determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the person necessary to the review and compensation for counsel appointed for the person. The costs, expenses and compensation so allowed shall be paid as provided in ORS 138.500.

(b) The order and the proceedings underlying the order are subject to review by the Court of Appeals upon petition to that court filed within 60 days of the order for which review is sought. The panel shall submit to the court the record of the proceeding or, if the person agrees, a shortened record. The record may include a certified true copy of a tape recording of the proceedings at a hearing in accordance with ORS 161.346. A copy of the record transmitted shall be delivered to the person by the panel.

(c) The court may affirm, reverse or remand the order on the same basis as provided in ORS 183.482 (8).

(d) The filing of the petition does not stay the panel's order, but the panel or the Court of Appeals may order a stay upon application on such terms as are deemed proper.

SECTION 110. ORS 161.390 is amended to read:

161.390. (1) The [*Department of Human Services*] **Oregon Health Authority** shall promulgate rules for the assignment of persons to state mental hospitals or secure intensive community inpatient facilities under ORS 161.341, 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons committed to a state hospital or a secure intensive community inpatient

facility, designated by the [*department*] **authority**, or ordered to a community mental health [*and developmental disabilities*] program under ORS 161.315 to 161.351 [*and 428.210*].

(2) Whenever the Psychiatric Security Review Board requires the preparation of a pre-discharge or preconditional release plan before a hearing or as a condition of granting discharge or conditional release for a person committed under ORS 161.327 or 161.341 to a state hospital or a secure intensive community inpatient facility for custody, care and treatment, the [*Department of Human Services*] **authority** is responsible for and shall prepare the plan.

(3) In carrying out a conditional release plan prepared under subsection (2) of this section, the [*Department of Human Services*] **authority** may contract with a community mental health [*and developmental disabilities*] program, other public agency or private corporation or an individual to provide supervision and treatment for the conditionally released person.

SECTION 111. ORS 165.698 is amended to read:

165.698. The prosecuting attorney shall notify the [*Department of Human Services*] **Oregon Health Authority** and any appropriate licensing boards of the conviction of a person under ORS 165.692.

SECTION 112. ORS 166.250 is amended to read:

166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274, 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(D) Was committed to the [*Department of Human Services*] **Oregon Health Authority** under ORS 426.130; or

(E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness.

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or

(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270 and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or keep any such firearm at the person's place of residence or place of business is required of any such citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(4) Unlawful possession of a firearm is a Class A misdemeanor.

SECTION 113. ORS 166.291 is amended to read:

166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license if the person:

(a)(A) Is a citizen of the United States; or

(B) Is a legal resident alien who can document continuous residency in the county for at least six months and has declared in writing to the United States Citizenship and Immigration Services the intent to acquire citizenship status and can present proof of the written declaration to the sheriff at the time of application for the license;

(b) Is at least 21 years of age;

(c) Is a resident of the county;

(d) Has no outstanding warrants for arrest;

(e) Is not free on any form of pretrial release;

(f) Demonstrates competence with a handgun by any one of the following:

(A) Completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or a similar agency of another state if handgun safety was a component of the course;

(B) Completion of any National Rifle Association firearms safety or training course if handgun safety was a component of the course;

(C) Completion of any firearms safety or training course or class available to the general public offered by law enforcement, community college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or a law enforcement agency if handgun safety was a component of the course;

(D) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, reserve law enforcement officers or any other law enforcement officers if handgun safety was a component of the course;

(E) Presents evidence of equivalent experience with a handgun through participation in organized shooting competition or military service;

(F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been revoked; or

(G) Completion of any firearms training or safety course or class conducted by a firearms instructor certified by a law enforcement agency or the National Rifle Association if handgun safety was a component of the course;

(g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor within the four years prior to the application;

(i) Has not been committed to the [*Department of Human Services*] **Oregon Health Authority** under ORS 426.130;

(j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(k) Has been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470;

(L) Has not been convicted of an offense involving controlled substances or participated in a court-supervised drug diversion program, except this disability does not operate to exclude a person if:

(A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed a court-supervised drug diversion program under ORS 135.907; or

(B) The person has completed a court-supervised drug diversion program under ORS 135.907 and has not been convicted of violating ORS 475.864 (3);

(m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738;

(n) Has not received a dishonorable discharge from the Armed Forces of the United States; and
(o) Is not required to register as a sex offender in any state.

(2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of this state or equivalent laws of other jurisdictions is not subject to the disabilities in subsection (1)(g) to (L) of this section.

(3) Before the sheriff may issue a license:

(a) The application must state the applicant's legal name, current address and telephone number, date and place of birth, hair and eye color and height and weight. The application must also list the applicant's residence address or addresses for the previous three years. The application must contain a statement by the applicant that the applicant meets the requirements of subsection (1) of this section. The application may include the Social Security number of the applicant if the applicant voluntarily provides this number. The application must be signed by the applicant.

(b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff shall fingerprint and photograph the applicant and shall conduct any investigation necessary to corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal records check is necessary, the sheriff shall request the Department of State Police to conduct the check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints. The Department of State Police shall report the results of the fingerprint-based criminal records check to the sheriff. The Department of State Police shall also furnish the sheriff with any information about the applicant that the Department of State Police may have in its possession from its central bureau of criminal identification including, but not limited to, manual or computerized criminal offender information.

(4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon request. The forms shall be uniform throughout the state in substantially the following form:

APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

Date _____

I hereby declare as follows:

I am a citizen of the United States or a legal resident alien who can document continuous residency in the county for at least six months and have declared in writing to the United States Citizenship and Immigration Services my intention to become a citizen and can present proof of the written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years, been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor. Except as provided in ORS 166.291 (1)(L), I have not been convicted of an offense involving controlled substances or completed a court-supervised drug diversion program. There are no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not been committed to the [Department of Human Services] **Oregon Health Authority** under ORS 426.130, nor have I been found mentally ill and presently subject to an order prohibiting me from purchasing or possessing a firearm because of mental illness. If any of the previous conditions do apply to me, I have been granted relief or wish to petition for relief from the disability under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738. I have never received a dishonorable discharge from the Armed Forces of the United States. I am

not required to register as a sex offender in any state. I understand I will be fingerprinted and photographed.

Legal name _____
Age _____ Date of birth _____
Place of birth _____
Social Security number _____

(Disclosure of your Social Security account number is voluntary. Solicitation of the number is authorized under ORS 166.291. It will be used only as a means of identification.)

Proof of identification (Two pieces of current identification are required, one of which must bear a photograph of the applicant. The type of identification and the number on the identification are to be filled in by the sheriff.):

- 1. _____
- 2. _____

Height _____ Weight _____
Hair color _____ Eye color _____

Current address _____

(List residence addresses for the past three years on the back.)

City _____ County _____ Zip _____
Phone _____

I have read the entire text of this application, and the statements therein are correct and true. (Making false statements on this application is a misdemeanor.)

(Signature of Applicant)

Character references.

Name	Address
Name	Address

Approved _____ Disapproved _____ by _____

Competence with handgun demonstrated by _____ (to be filled in by sheriff) Date _____ Fee Paid _____

License No. _____

- (5)(a) Fees for concealed handgun licenses are:
- (A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.
 - (B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.
 - (C) \$15 to the sheriff for the duplication of a license because of loss or change of address.
- (b) The sheriff may enter into an agreement with the Department of Transportation to produce the concealed handgun license.
- (6) No civil or criminal liability shall attach to the sheriff or any authorized representative engaged in the receipt and review of, or an investigation connected with, any application for, or in the

issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful performance of duties under those sections.

(7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the person is an applicant for a concealed handgun license or is a license holder.

(8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section for a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated need.

(9) For purposes of subsection (1)(c) of this section, a person is a resident of a county if the person:

(a) Has a current Oregon driver license issued to the person showing a residence address in the county;

(b) Is registered to vote in the county and has a memorandum card issued to the person under ORS 247.181 showing a residence address in the county;

(c) Has documentation showing that the person currently leases or owns real property in the county; or

(d) Has documentation showing that the person filed an Oregon tax return for the most recent tax year showing a residence address in the county.

SECTION 114. ORS 166.412 is amended to read:

166.412. (1) As used in this section:

(a) "Antique firearm" has the meaning given that term in 18 U.S.C. 921;

(b) "Department" means the Department of State Police;

(c) "Firearm" has the meaning given that term in ORS 166.210, except that it does not include an antique firearm;

(d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C. 921 to 929;

(e) "Firearms transaction thumbprint form" means a form provided by the department under subsection (12) of this section;

(f) "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise;

(g) "Handgun" has the meaning given that term in ORS 166.210; and

(h) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun dealer.

(2) Except as provided in subsections (3)(c) and (13) of this section, a gun dealer shall comply with the following before a handgun is delivered to a purchaser:

(a) The purchaser shall present to the dealer current identification meeting the requirements of subsection (4) of this section.

(b) The gun dealer shall complete the firearms transaction record and obtain the signature of the purchaser on the record.

(c) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be filed with that copy.

(d) The gun dealer shall request by telephone that the department conduct a criminal history record check on the purchaser and shall provide the following information to the department:

(A) The federal firearms license number of the gun dealer;

(B) The business name of the gun dealer;

(C) The place of transfer;

(D) The name of the person making the transfer;

(E) The make, model, caliber and manufacturer's number of the handgun being transferred;

(F) The name and date of birth of the purchaser;

(G) The Social Security number of the purchaser if the purchaser voluntarily provides this number to the gun dealer; and

(H) The type, issuer and identification number of the identification presented by the purchaser.

(e) The gun dealer shall receive a unique approval number for the transfer from the department and record the approval number on the firearms transaction record and on the firearms transaction thumbprint form.

(f) The gun dealer may destroy the firearms transaction thumbprint form five years after the completion of the firearms transaction thumbprint form.

(3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the department shall immediately, during the gun dealer's telephone call or by return call:

(A) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under ORS 166.470 from completing the purchase; and

(B) Notify the dealer when a purchaser is disqualified from completing the transfer or provide the dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer with an estimate of the time when the department will provide the requested information.

(c) If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close of the gun dealer's next business day following the request by the dealer for a criminal history record check, the dealer may deliver the handgun to the purchaser.

(4)(a) Identification required of the purchaser under subsection (2) of this section shall include one piece of current identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States Government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi- governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(b) If the identification presented by the purchaser under paragraph (a) of this subsection does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser. The Superintendent of State Police may specify by rule the type of identification that may be presented under this paragraph.

(c) The department may require that the dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the department.

(5) The department shall establish a telephone number that shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from dealers for a criminal history record check under this section.

(6) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided the employee, official or agency acts in good faith and without malice.

(7)(a) The department may retain a record of the information obtained during a request for a criminal records check for no more than five years.

(b) The record of the information obtained during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law.

(8) The [*Department of Human Services*] **Oregon Health Authority** shall provide the Department of State Police with direct electronic access to information from the [*Department of Human Services*'] **authority's** database of information identifying persons meeting the criteria in ORS 166.470 (1)(e) and (f) who were committed or subject to an order under ORS 426.130. The [*Department of State Police and the Department of Human Services*] **department and the authority** shall enter into an agreement describing the access to information under this subsection.

(9) A law enforcement agency may inspect the records of a gun dealer relating to transfers of handguns with the consent of a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(10) When a handgun is delivered, it shall be unloaded.

(11) In accordance with applicable provisions of ORS chapter 183, the Superintendent of State Police may adopt rules necessary for:

(a) The design of the firearms transaction thumbprint form;

(b) The maintenance of a procedure to correct errors in the criminal records of the department;

(c) The provision of a security system to identify dealers who request a criminal history record check under subsection (2) of this section; and

(d) The creation and maintenance of a database of the business hours of gun dealers.

(12) The department shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(13) This section does not apply to transactions between persons licensed as dealers under 18 U.S.C. 923.

SECTION 115. ORS 166.470 is amended to read:

166.470. (1) Unless relief has been granted under ORS 166.274, 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably should know that the recipient:

(a) Is under 18 years of age;

(b) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(c) Has any outstanding felony warrants for arrest;

(d) Is free on any form of pretrial release for a felony;

(e) Was committed to the [*Department of Human Services*] **Oregon Health Authority** under ORS 426.130;

(f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; or

(g) Has been convicted of a misdemeanor involving violence or found guilty, except for insanity under ORS 161.295, of a misdemeanor involving violence within the previous four years. As used in this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160, 163.187, 163.190, 163.195 or 166.155 (1)(b).

(2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or reasonably should know is stolen.

(3) Subsection (1)(a) of this section does not prohibit:

(a) The parent or guardian, or another person with the consent of the parent or guardian, of a minor from transferring to the minor a firearm, other than a handgun; or

(b) The temporary transfer of any firearm to a minor for hunting, target practice or any other lawful purpose.

(4) Violation of this section is a Class A misdemeanor.

SECTION 116. ORS 169.076 is amended to read:

169.076. Each local correctional facility shall:

(1) Provide sufficient staff to perform all audio and visual functions involving security, control, custody and supervision of all confined detainees and prisoners, with personal inspection at least once each hour. The supervision may include the use of electronic monitoring equipment when approved by the Department of Corrections and the governing body of the area in which the facility is located.

(2) Have a comprehensive written policy with respect to:

(a) Legal confinement authority.

(b) Denial of admission.

- (c) Telephone calls.
- (d) Admission and release medical procedures.
- (e) Medication and prescriptions.
- (f) Personal property accountability which complies with ORS 133.455.
- (g) Vermin and communicable disease control.
- (h) Release process to include authority, identification and return of personal property.
- (i) Rules of the facility governing correspondence and visitations.
- (3) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, rebellions and other types of emergencies; and regulations for the operation of the facility.
- (4) Not administer any physical punishment to any prisoner at any time.
- (5) Provide for emergency medical and dental health, having written policies providing for:
 - (a) Licensed physician or nurse practitioner review of the facility's medical and dental plans.
 - (b) The security of medication and medical supplies.
 - (c) A medical and dental record system to include request for medical and dental attention, treatment prescribed, prescriptions, special diets and other services provided.
 - (d) First aid supplies and staff first aid training.
- (6) Prohibit firearms from the security area of the facility except in times of emergency as determined by the administrator of the facility.
- (7) Insure that confined detainees and prisoners:
 - (a) Will be fed daily at least three meals served at regular times, with no more than 14 hours between meals except when routinely absent from the facility for work or other purposes.
 - (b) Will be fed nutritionally adequate meals in accordance with a plan reviewed by a registered dietitian or the *[Department of Human Services]* **Oregon Health Authority**.
 - (c) Be provided special diets as prescribed by the designated facility physician or nurse practitioner.
 - (d) Shall have food procured, stored, prepared, distributed and served under sanitary conditions, as defined by *[the Department of Human Services rules as authorized by ORS 624.041]* **the authority under ORS 624.041**.
- (8) Insure that the facility be clean, and provide each confined detainee or prisoner:
 - (a) Materials to maintain personal hygiene.
 - (b) Clean clothing twice weekly.
 - (c) Mattresses and blankets that are clean and fire-retardant.
- (9) Require each prisoner to shower at least twice weekly.
- (10) Forward, without examination or censorship, each prisoner's outgoing written communications to the Governor, jail administrator, Attorney General, judge, Department of Corrections or the attorney of the prisoner.
- (11) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Code.
- (12) Have and provide each prisoner with written rules for inmate conduct and disciplinary procedures. If a prisoner cannot read or is unable to understand the written rules, the information shall be conveyed to the prisoner orally.
- (13) Not restrict the free exercise of religion unless failure to impose the restriction will cause a threat to facility or order.
- (14) Safeguard and insure that the prisoner's legal rights to access to legal materials are protected.

SECTION 117. ORS 169.690 is amended to read:

169.690. (1)(a) Before the Department of Corrections, *[Oregon Youth Authority or Department of Human Services]* **Department of Human Services, Oregon Health Authority, Oregon Youth Authority** or any city, county or other public agency establishes a facility described in paragraph (c) of this subsection, the city, county, department, *[youth]* authority or agency must designate a citizens advisory committee in the proposed affected geographic area.

(b) If there is an established citizens group or neighborhood organization in the affected geographic area which is established or recognized by the city or county where it is located, it shall be asked to nominate the committee. If there is none, the local government body having jurisdiction over the affected area shall appoint a committee selected from residents of the area.

(c) The facilities to which paragraph (a) of this subsection applies are:

(A) Halfway houses, work release centers or any other domiciliary facilities for persons released from any penal or correctional facility but still in the custody of the city, county or public agency; and

(B) Youth care centers or other facilities authorized to accept youth offenders under ORS 419C.478.

(2) The local governmental body having jurisdiction over the affected geographic area shall appoint to the citizens advisory committee persons from those nominated under subsection (1) of this section and shall invite the participation of officers of local governments having jurisdiction over the area.

(3) For each proposed house, center or other facility, the agency responsible for establishing the house, center or facility shall inform fully the citizens advisory committee of each affected geographic area of the following:

(a) The proposed location, estimated population size and use;

(b) The numbers and qualifications of resident professional staff;

(c) The proposed rules of conduct and discipline to be imposed on residents; and

(d) Such other relevant information as the agency responsible for establishing the house, center or facility considers appropriate or which the advisory committee requests.

(4) The citizens advisory committee shall advise the agency responsible for establishing the house, center or facility as to the suitability of the proposed house, center or other facility and may suggest changes in the proposal submitted under subsection (3) of this section. The advice shall be in writing and must represent the view of the majority of the committee.

(5) If the agency responsible for establishing the house, center or facility rejects any of the advice of the citizens advisory committee, it must submit its reasons in writing to the committee.

(6) No person serving on a committee established under this section should be entitled to receive any compensation or reimbursement for service on such committee.

SECTION 118. ORS 179.010 is amended to read:

179.010. As used in this chapter, unless the context requires otherwise[, "*institutions*" means the institutions designated in ORS 179.321.];

(1) "**Institution**" means the institutions designated in ORS 179.321.

(2) "**Agency**" means:

(a) **The Department of Corrections when the institution is a Department of Corrections institution, as defined in ORS 421.005;**

(b) **The Department of Human Services when the institution is the Eastern Oregon Training Center; or**

(c) **The Oregon Health Authority when the institution is the Blue Mountain Recovery Center or an Oregon State Hospital campus.**

SECTION 119. ORS 179.040 is amended to read:

179.040. (1) [*The Department of Corrections and the Department of Human Services*] **The Department of Corrections, the Department of Human Services and the Oregon Health Authority** shall:

(a) Govern, manage and administer the affairs of the public institutions and works within their respective jurisdictions.

(b) Enter into contracts for the planning, erection, completion and furnishings of all new buildings or additions at their respective institutions.

(c) Subject to any applicable provisions of ORS 279A.125, 279A.255, 279A.275, 279A.280, 279A.285, 279A.290, 279B.025, 279B.240, 279B.270, 279B.275, 279B.280 and 283.110 to 283.395, enter into contracts for the purchase of supplies for their respective institutions.

(d) Make and adopt rules, not inconsistent with law, for the guidance of the [*Department of Corrections or the Department of Human Services*] **agencies** and for the government of their respective institutions.

(2) The [*Department of Corrections and the Department of Human Services*] **agencies**, respectively, may:

(a) Sue and plead in all courts of law and equity.

(b) Perform all legal and peaceful acts requisite and necessary for the successful management and maintenance of the institutions within their respective jurisdictions.

SECTION 120. ORS 179.050 is amended to read:

179.050. The [*Department of Corrections and the Department of Human Services*] **Department of Corrections, the Department of Human Services and the Oregon Health Authority** may receive, take and hold property, both real and personal, for any institution within their respective jurisdictions. Title shall be taken in the name of the state.

SECTION 121. ORS 179.055 is amended to read:

179.055. (1) The revenue from the rental or lease of property administered by an institution governed or managed by the [*Department of Corrections or the Department of Human Services*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, except dormitory and housing rentals at institutions governed by [*either department*] **the agencies**, shall be deposited in the account of the respective [*department*] **agency** for use by the respective [*department*] **agency** to pay for the cost of administration, taxes, repairs and improvements on the property.

(2) The [*Department of Corrections or Department of Human Services*] **agencies** may request the Oregon Department of Administrative Services to make necessary repairs and improvements on the property described in subsection (1) of this section to be paid for by the [*Department of Corrections or Department of Human Services*] **agencies** from the proceeds derived from such rental or lease of the property or from appropriations otherwise available.

SECTION 122. ORS 179.065 is amended to read:

179.065. The [*Department of Corrections and the Department of Human Services*] **Department of Corrections, the Department of Human Services and the Oregon Health Authority** shall have the same powers with respect to furnishing heat, light, power, sewage, fire protection and communications facilities to institutions under their respective jurisdictions as is granted to the Oregon Department of Administrative Services under ORS 276.210 to 276.228, 276.234 to 276.244, 276.250 and 276.252. The powers shall be exercised in accordance with and subject to the provisions of such sections.

SECTION 123. ORS 179.105 is amended to read:

179.105. (1) For a purpose of ORS 179.040, including aid and support of research in any of the institutions, the [*Department of Corrections and the Department of Human Services*] **Department of Corrections, the Department of Human Services and the Oregon Health Authority** may in their respective discretions accept from the United States or any of its agencies financial assistance and grants in the form of money or labor, or from any other source any donation or grant of land or gift of money or any other thing. Funds accepted in accordance with the provisions of this section and ORS 179.110 shall be deposited with the State Treasurer and, subject to subsection (2) of this section, are continuously appropriated to the Department of Corrections, **the [or] Department of Human Services or the Oregon Health Authority**, as appropriate, and may be expended by the **Department of Corrections, the Department of Human Services or the Oregon Health Authority** according to the conditions and terms of the grant or donation.

(2) Funds received under subsection (1) of this section or ORS 179.110 shall be expended subject to expenditure limitations imposed on the Department of Corrections, **the [or] Department of Human Services or the Oregon Health Authority** by the Legislative Assembly or, in the absence of such limitations, only after approval of the Legislative Assembly or of the Emergency Board, if approval is required during the interim between sessions of the Legislative Assembly.

(3) In any case where prior approval of the authority to expend any funds available under subsection (1) of this section or ORS 179.110 is imposed as a term or condition of receipt of such funds, the Legislative Assembly or the Emergency Board may approve expenditures of such funds prior to their receipt.

SECTION 124. ORS 179.110 is amended to read:

179.110. Subject to the approval of the Director of the Oregon Department of Administrative Services, the [*Department of Corrections and the Department of Human Services*] **Department of Corrections, the Department of Human Services and the Oregon Health Authority**, respectively, may accept and receive grants of funds from the United States or any of its agencies for the construction, equipment and betterment of any of the institutions under its jurisdiction and may cooperate with the United States or its agencies in such construction, equipment and betterment. Any balances of appropriations for capital outlay for any institution resulting from the use of funds so received shall be placed in a common fund. The Department of Corrections, [*and*] the Department of Human Services **and the Oregon Health Authority** are authorized and empowered in their discretion to expend such common fund or any portion thereof in the construction, equipment or betterment of any institution under its jurisdiction.

SECTION 125. ORS 179.140 is amended to read:

179.140. Subject to any applicable provision of ORS 279A.125, 279A.255, 279A.275, 279A.280, 279A.285, 279A.290, 279B.025, 279B.240, 279B.270, 279B.275, 279B.280, 283.110 to 283.395 and 291.232 to 291.260, all claims for supplies or materials furnished or services rendered to institutions shall be audited and approved as provided by law, upon the presentation of duly verified vouchers therefor, approved in writing by the Director of the Department of Corrections, [*or by*] the Director of Human Services **or the Director of the Oregon Health Authority**, or by their designees.

SECTION 126. ORS 179.150 is amended to read:

179.150. No officer of the Department of Corrections, [*or*] the Department of Human Services **or the Oregon Health Authority** or officer, employee or other person connected with an institution shall be pecuniarily interested in any contract for supplies or services furnished or rendered to an institution, other than the services of regular employment.

SECTION 127. ORS 179.210 is amended to read:

179.210. (1) The Department of Human Services, the Department of Corrections, **the Oregon Health Authority** and the Superintendent of Public Instruction may audit, allow and pay a claim for damage to property made by an employee of one of those agencies if:

(a) The damage to property arises out of the claimant's employment at one of the institutions or facilities operated by the [*Department of Human Services or the Department of Corrections*] **agencies**, or one of the schools operated by the Superintendent of Public Instruction under ORS 346.010; and

(b) The employee files a written claim with the employee's employer within 180 days after the employee discovers or should have discovered the damage.

(2) No claim under subsection (1) of this section shall be paid:

(a) That exceeds, in the aggregate with payments of other claims, the moneys appropriated for such purpose.

(b) To the extent that the person incurring damage has been or may be compensated by liability insurance or otherwise.

(c) If the [*Department of Human Services, the Department of Corrections*] **agencies** or the Superintendent of Public Instruction determines the cause or occasion of the accident resulting in damage is chargeable to the conduct or negligence of the party damaged.

SECTION 128. ORS 179.230 is amended to read:

179.230. The decision of the Department of Human Services, the Department of Corrections, **the Oregon Health Authority** or the Superintendent of Public Instruction to reject any claim filed under ORS 179.210 is final, and is not subject to review under ORS chapter 183, or by any other agency or court. The provisions of this section do not affect any other remedy that may be available to the claimant under law.

SECTION 129. ORS 179.240 is amended to read:

179.240. (1) If any person owes a debt to this state or a state agency, and the debt has been fixed by final judgment of a court of competent jurisdiction or is no longer subject to judicial review, the [Department of Corrections or the Department of Human Services] **Department of Corrections, the Department of Human Services or the Oregon Health Authority** shall deduct the amount of the debt from any award made to that person under ORS 179.210.

(2) The [Department of Corrections or the Department of Human Services] **agencies** shall request the State Treasurer to transfer to the appropriate fund or account to which the debt is owed, an amount equal to the amount deducted from the award under subsection (1) of this section, for use during that biennium in accordance with law by the state agency administering the fund or account to which the debt is owed. The State Treasurer shall evidence the transfer by proper bookkeeping entries. If the [Department of Corrections, Department of Human Services] **Department of Corrections, the Department of Human Services, the Oregon Health Authority** or the State Treasurer cannot determine the appropriate fund or account, the amount shall be transferred to the General Fund for general governmental purposes.

(3) Any debt owed by a person to this state or a state agency is satisfied, upon the completion of a transfer made pursuant to subsection (2) of this section, to the extent of the amount so transferred.

SECTION 130. ORS 179.321 is amended to read:

179.321. (1) The Department of Human Services shall operate, control, manage and supervise [the Blue Mountain Recovery Center, the Eastern Oregon Training Center and the Oregon State Hospital] **the Eastern Oregon Training Center.**

(2) **The Oregon Health Authority shall operate, control, manage and supervise the Blue Mountain Recovery Center and the Oregon State Hospital campuses.**

[(2)] (3) The Department of Corrections shall operate, control, manage and supervise those institutions defined as Department of Corrections institutions in ORS 421.005.

SECTION 131. ORS 179.325 is amended to read:

179.325. (1) The Department of Human Services may order the change, in all or part, of the purpose and use of any state institution being used as an institution for the care and treatment of persons with [mental illness or] mental retardation in order to care for persons committed to its custody whenever the department determines that a change in purpose and use will better enable [the] **this state to meet its responsibilities to persons with [mental illness or] mental retardation.** In determining whether to order the change, the department shall consider changes in the number and source of the admissions of persons with [mental illness or] mental retardation.

(2) **The Oregon Health Authority may order the change, in all or part, of the purpose and use of any state institution being used as an institution for the care and treatment of persons with mental illness in order to care for persons committed to its custody whenever the authority determines that a change in purpose and use will better enable this state to meet its responsibilities to persons with mental illness. In determining whether to order the change, the authority shall consider changes in the number and source of the admissions of persons with mental illness.**

SECTION 132. ORS 179.331 is amended to read:

179.331. (1) The superintendents shall be appointed and, whenever the public service requires such action, may be removed, suspended or discharged, as follows:

(a) [Superintendents of institutions described in ORS 179.321 (1)] **The superintendent of the Eastern Oregon Training Center,** by the Director of Human Services.

(b) **The superintendents of the Blue Mountain Recovery Center and the Oregon State Hospital, by the Director of the Oregon Health Authority.**

[(b)] (c) **The superintendents of Department of Corrections institutions as defined in ORS 421.005, by the Director of the Department of Corrections.**

(2) For purposes of the State Personnel Relations Law, the superintendents are assigned to the unclassified service.

SECTION 133. ORS 179.360 is amended to read:

179.360. (1) Each superintendent shall:

- (a) Have custody of the residents of the institution under jurisdiction of the superintendent.
- (b) Direct the care, custody and training of the residents unless otherwise directed by law or by rule.
- (c) Adopt sanitary measures for the health and comfort of the residents.
- (d) Promote the mental, moral and physical welfare and development of the residents.
- (e) Enjoy the other powers and privileges and perform the other duties that are prescribed by law or by rule or that naturally attach themselves to the position of superintendent.
- (f) Designate a physician licensed by the Oregon Medical Board to serve as chief medical officer as provided in ORS 426.020 and 427.010, who will be directly responsible to the superintendent for administration of the medical treatment programs at the institution and assume such other responsibilities as are assigned by the superintendent.

(2) *[The Director of the Department of Corrections or the Director of Human Services]* **The Director of the Department of Corrections, the Director of Human Services and the Director of the Oregon Health Authority** shall prescribe for their respective institutions:

- (a) The duties of the superintendents where the duties are not prescribed by law.
- (b) The additional duties, beyond those prescribed by law, that *[the Director of the Department of Corrections or the Director of Human Services]* **each agency director** considers necessary for the good of the public service.

SECTION 134. ORS 179.370 is amended to read:

179.370. *[The Director of the Department of Corrections or the Director of Human Services]* **The Director of the Department of Corrections, the Director of Human Services or the Director of the Oregon Health Authority** may require that a superintendent reside in state-provided housing at the institution under the jurisdiction of the superintendent. The rental shall be determined pursuant to ORS 182.425.

SECTION 135. ORS 179.375 is amended to read:

179.375. (1) The *[Department of Corrections and the Department of Human Services]* **Department of Corrections, the Department of Human Services and the Oregon Health Authority** shall *[insure]* **ensure** that adequate chaplaincy services, including but not limited to Protestant and Roman Catholic, are available at their respective institutions.

(2) Chaplains serving the various institutions shall, with respect to the inmates or patients at such institutions:

- (a) Provide for and attend to their spiritual needs.
- (b) Visit them for the purpose of giving religious and moral instruction.
- (c) Participate in the rehabilitation programs affecting them.

SECTION 136. ORS 179.380 is amended to read:

179.380. (1) The *[Department of Corrections and the Department of Human Services]* **Department of Corrections, the Department of Human Services and the Oregon Health Authority** shall authorize the employment of all necessary physicians, attendants, nurses, engineers, messengers, clerks, guards, cooks, waiters and other officers and employees not specifically authorized by law and necessary to the successful maintenance of their respective institutions. The amounts expended for the services of such officers and employees shall not exceed the amounts provided therefor in the biennial appropriations for the institution.

(2) The *[Department of Corrections and the Department of Human Services]* **agencies** shall designate in their respective rules which employees shall be officers, and shall require all officers to take and subscribe to an oath of office and, if the circumstances require it, to furnish bonds.

SECTION 137. ORS 179.385 is amended to read:

179.385. The *[Department of Corrections and the Department of Human Services]* **Department of Corrections, the Department of Human Services and the Oregon Health Authority**, respectively, may establish scholarship programs to provide assistance in securing qualified personnel at

state institutions governed by them. Scholarships authorized by this section shall be granted in accordance with rules and regulations adopted respectively by the [departments] agencies.

SECTION 138. ORS 179.390 is amended to read:

179.390. (1) The superintendent of an institution [other than an institution within the jurisdiction of the Department of Human Services shall, subject to the approval of the Director of Human Services or the] **within the jurisdiction of the Department of Corrections shall, subject to the approval of the Director of the Department of Corrections,** appoint in the manner provided by law all assistants, officers and other employees at the institution under the jurisdiction of the superintendent. The superintendent may suspend or remove an assistant, officer or other employee in the manner provided by law, reporting all acts of suspension or removal to the [Director of Human Services or] Director of the Department of Corrections for approval or disapproval. [The Director of Human Services or Director of the Department of Corrections shall fix the salaries of assistants, officers and employees where their salary is not fixed by law. The Director of Human Services or Director of the Department of Corrections shall, subject to any applicable provisions of the State Personnel Relations Law, suspend or discharge any subordinate of a superintendent when public service requires such action.]

(2) The Director of the Department of Corrections, the Director of Human Services and the Director of the Oregon Health Authority shall:

(a) Fix the salaries of assistants, officers and employees where their salary is not fixed by law.

(b) Suspend or discharge any subordinate of a superintendent when public service requires such action, except when suspending or discharging the subordinate violates the State Personnel Relations Law.

[(2)] **(3) The Director of Human Services or a designee at [each] a facility under jurisdiction of the Department of Human Services shall, as provided by law, appoint, suspend or discharge an employee of the department. The Director of Human Services may designate up to three employees at each facility to act in the name of the director in accordance with ORS 240.400.**

(4) The Director of the Oregon Health Authority or a designee at a facility under jurisdiction of the Oregon Health Authority shall, as provided by law, appoint, suspend or discharge an employee of the authority. The director may designate up to three employees at each facility to act in the name of the director in accordance with ORS 240.400.

[(3)] **(5) In addition to or in lieu of employing physicians, the Director of the Department of Corrections or the designee thereof may contract for the personal services of physicians licensed to practice medicine by the Oregon Medical Board to serve as medical advisors for the [Department of Human Services] Oregon Health Authority. Advisors under such contracts shall be directly responsible for administration of medical treatment programs at penal and correctional institutions, as defined in ORS 421.005.**

SECTION 139. ORS 179.450 is amended to read:

179.450. The [Department of Corrections may direct the employment of able-bodied persons at the Department of Corrections institutions and the Department of Human Services may direct the employment of able-bodied persons at institutions for persons with mental illness or mental retardation] **Department of Corrections, the Department of Human Services and the Oregon Health Authority may direct the employment of able-bodied persons at the agencies' respective institutions,** in the performance of useful work upon land owned by the state if it does not compete with free labor. Work may not be performed upon any such land except by consent and approval of the agency of the state having management of the land.

SECTION 140. ORS 179.460 is amended to read:

179.460. (1) In order to encourage industry and thereby increase productiveness in the institutions, the [Department of Corrections and the Department of Human Services] **Department of Corrections, the Department of Human Services and the Oregon Health Authority** shall prescribe rules and regulations for the sale and exchange of surplus products of each.

(2) The funds derived from the sale of the surplus products shall be paid into the State Treasury and become a part of a fund to be known as the State Institutional Betterment Fund, which fund shall be expended by the [*Department of Corrections and the Department of Human Services*] **agencies**, respectively, for the benefit of the institutions in proportion to the amount earned by each.

(3) The provisions of this section apply to schools operated under ORS 346.010.

SECTION 141. ORS 179.473 is amended to read:

179.473. (1) Whenever the health and welfare of the person and the efficient administration of the institution require the transfer of an inmate of a Department of Corrections institution or a youth offender in a youth correction facility to another institution:

(a) The Department of Corrections or the Oregon Youth Authority, with the consent of the Department of Human Services, may transfer a person at any institution under its jurisdiction to an institution for persons with mental retardation, or, with the consent of the Oregon Health and Science University, to the Oregon Health and Science University.

(b) The Department of Corrections may transfer an inmate of a Department of Corrections institution to a state mental hospital listed in ORS 426.010 for evaluation and treatment pursuant to rules adopted jointly by the Department of Corrections and the [*Department of Human Services*] **Oregon Health Authority**.

(c) The Oregon Youth Authority may transfer a youth offender or other person confined in a youth correction facility to a hospital or facility designated by the [*Department of Human Services*] **Oregon Health Authority** for evaluation and treatment pursuant to rules adopted jointly by the Oregon Youth Authority and the [*Department of Human Services*] **Oregon Health Authority**.

(d) Except as provided in subsection (2) of this section, the Department of Corrections or the Oregon Youth Authority may make a transfer of a person from any institution under the jurisdiction of the department or **the Oregon Youth Authority** to any other institution under the jurisdiction of the department or authority.

(2) A youth offender in a youth correction facility may not be transferred to a Department of Corrections institution under subsection (1) of this section. A youth offender in a youth correction facility who has been transferred to another institution may not be transferred from such other institution to a Department of Corrections institution.

(3) The rules adopted under subsection (1)(b) and (c) of this section must:

(a) Provide the inmate or youth offender with the rights to which persons are entitled under ORS 179.485.

(b) Provide that a transfer of an inmate or a youth offender to the [*Department of Human Services*] **Oregon Health Authority** for stabilization and evaluation for treatment may not exceed 30 days unless the transfer is extended pursuant to a hearing required by paragraph (c) of this subsection.

(c) Provide for an administrative commitment hearing if:

(A) The [*Department of Human Services*] **Oregon Health Authority** determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the [*Department of Human Services*] **authority** needs more than 30 days to stabilize or evaluate the inmate or youth offender for treatment; and

(B) The inmate or youth offender does not consent to the administrative commitment or an extension of the transfer.

(d) Provide for, at a minimum, all of the following for the administrative commitment hearing process:

(A) Written notice to the inmate or youth offender that an administrative commitment to a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the [*Department of Human Services*] **Oregon Health Authority** or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the inmate or youth offender to prepare for the hearing.

(B) Disclosure to the inmate or youth offender, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the inmate or youth offender to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the inmate or youth offender to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subparagraph may be denied upon a finding by the decision maker of good cause for not permitting the inmate or youth offender to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the inmate or youth offender or extending the transfer.

(G) A qualified and independent assistant for the inmate or youth offender to be provided by the state if the inmate or youth offender is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (A) to (G) of this paragraph.

(e) Provide that an inmate or a youth offender may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the inmate or youth offender is a mentally ill person as defined in ORS 426.005.

(f) Provide that the duration of an administrative commitment pursuant to an administrative commitment hearing be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing. Notwithstanding this paragraph, an administrative commitment may not continue beyond the term of incarceration to which the inmate was sentenced or beyond the period of time that the youth offender may be placed in a youth correction facility.

SECTION 142. ORS 179.479 is amended to read:

179.479. (1) The superintendent or other chief executive officer of an institution described in ORS 179.321 may, when authorized by regulation or direction of the [*Department of Corrections or Department of Human Services*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, convey an inmate to a physician, clinic or hospital, including the Oregon Health and Science University, for medical, surgical or dental treatment when such treatment cannot satisfactorily be provided at the institution. An inmate conveyed for treatment pursuant to this section shall be kept in the custody of the institution from which the inmate is conveyed.

(2) The Department of Corrections, [*and*] the Department of Human Services [*each*] **and the Oregon Health Authority** shall prescribe rules and regulations governing conveyances authorized by this section.

SECTION 143. ORS 179.490 is amended to read:

179.490. In the case of a necessary or emergency operation, requiring the services of a specialist, and where the relatives or guardians, in the judgment of the [*Department of Corrections or Department of Human Services*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, are unable to pay a part or the whole cost of the operation, [*either department, in its discretion,*] **the agencies** may have the operation performed, the cost of the operation to be payable from the funds of the institution concerned.

SECTION 144. ORS 179.492 is amended to read:

179.492. (1) The [*Department of Human Services or the Department of Corrections*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority** shall dispense as written a prescription for a brand-name mental health drug prescribed for a person while the person is in the custody of an institution described in ORS 179.321 if the prescription specifies "dispense as written" or contains the notation "D.A.W." or other words of similar meaning.

(2) If, at the time of commitment to the custody of an institution described in ORS 179.321, a person has a prescription for a specified brand-name mental health drug and the prescription specifies "dispense as written" or contains the notation "D.A.W." or other words of similar meaning, the

[*Department of Human Services or the*] Department of Corrections, **the Department of Human Services or the Oregon Health Authority** shall ensure that the person is prescribed the specified brand-name drug until a licensed health professional with prescriptive privileges evaluates the person and becomes responsible for the treatment of the person.

SECTION 145. ORS 179.505 is amended to read:

179.505. (1) As used in this section:

(a) "Disclosure" means the release of, transfer of, provision of access to or divulgence in any other manner of information outside the health care services provider holding the information.

(b) "Health care services provider" means:

(A) Medical personnel or other staff employed by or under contract with a public provider to provide health care or maintain written accounts of health care provided to individuals; or

(B) Units, programs or services designated, operated or maintained by a public provider to provide health care or maintain written accounts of health care provided to individuals.

(c) "Individually identifiable health information" means any health information that is:

(A) Created or received by a health care services provider; and

(B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(i) The past, present or future physical or mental health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The past, present or future payment for the provision of health care to an individual.

(d) "Personal representative" includes but is not limited to:

(A) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions; and

(C) A person appointed as a personal representative under ORS chapter 113.

(e) "Psychotherapy notes" means notes recorded in any medium:

(A) By a mental health professional, in the performance of the official duties of the mental health professional;

(B) Documenting or analyzing the contents of conversation during a counseling session; and

(C) That are maintained separately from the rest of the individual's record.

(f) "Psychotherapy notes" does not mean notes documenting:

(A) Medication prescription and monitoring;

(B) Counseling session start and stop times;

(C) Modalities and frequencies of treatment furnished;

(D) Results of clinical tests; or

(E) Any summary of the following items:

(i) Diagnosis;

(ii) Functional status;

(iii) Treatment plan;

(iv) Symptoms;

(v) Prognosis; or

(vi) Progress to date.

(g) "Public provider" means:

(A) The [*state institutions for the care and treatment of individuals with mental illness or developmental disabilities operated by the Department of Human Services*] **Blue Mountain Recovery Center, the Eastern Oregon Training Center and the Oregon State Hospital campuses;**

(B) Department of Corrections institutions as defined in ORS 421.005;

(C) A contractor of the [*Department of Human Services or the Department of Corrections*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority**

that provides health care to individuals residing in a state institution operated by the [*Department of Human Services or the Department of Corrections*] **agencies**;

(D) A community mental health [*and*] **program or community** developmental disabilities program as described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to provide mental health or developmental disabilities programs or services;

(E) A program or service provided under ORS 431.250, 431.375 to 431.385 or 431.416;

(F) A program or service [*licensed, approved, established, maintained or operated by or contracted with the Department of Human Services under ORS 430.630 for individuals with developmental disabilities and individuals with mental or emotional disturbances*] **established or maintained under ORS 430.630**;

(G) A program or facility providing an organized full-day or part-day program of treatment that is licensed, approved, established, maintained or operated by or contracted with the [*Department of Human Services*] **Oregon Health Authority** for alcoholism, drug addiction or mental or emotional disturbance; or

(H) A program or service providing treatment by appointment that is licensed, approved, established, maintained or operated by or contracted with the [*Department of Human Services*] **authority** for alcoholism, drug addiction or mental or emotional disturbance.

(h) "Written account" means records containing only individually identifiable health information.

(2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16) and (17) of this section or unless otherwise permitted or required by state or federal law or by order of the court, written accounts of the individuals served by any health care services provider maintained in or by the health care services provider by the officers or employees thereof who are authorized to maintain written accounts within the official scope of their duties are not subject to access and may not be disclosed. This subsection applies to written accounts maintained in or by facilities of the Department of Corrections only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Department of Corrections.

(3) If the individual or a personal representative of the individual provides an authorization, the content of any written account referred to in subsection (2) of this section must be disclosed accordingly, if the authorization is in writing and is signed and dated by the individual or the personal representative of the individual and sets forth with specificity the following:

(a) Name of the health care services provider authorized to make the disclosure, except when the authorization is provided by recipients of or applicants for public assistance to a governmental entity for purposes of determining eligibility for benefits or investigating for fraud;

(b) Name or title of the persons or organizations to which the information is to be disclosed or that information may be disclosed to the public;

(c) Name of the individual;

(d) Extent or nature of the information to be disclosed; and

(e) Statement that the authorization is subject to revocation at any time except to the extent that action has been taken in reliance thereon, and a specification of the date, event or condition upon which it expires without express revocation. However, a revocation of an authorization is not valid with respect to inspection or records necessary to validate expenditures by or on behalf of governmental entities.

(4) The content of any written account referred to in subsection (2) of this section may be disclosed without an authorization:

(a) To any person to the extent necessary to meet a medical emergency.

(b) At the discretion of the responsible officer of the health care services provider, which in the case of any [*Department of Human Services facility or community mental health and developmental disabilities program shall be the Director of Human Services*] **Oregon Health Authority facility or community mental health program is the Director of the Oregon Health Authority**, to persons engaged in scientific research, program evaluation, peer review and fiscal audits. However, individ-

ual identities may not be disclosed to such persons, except when the disclosure is essential to the research, evaluation, review or audit and is consistent with state and federal law.

(c) To governmental agencies when necessary to secure compensation for services rendered in the treatment of the individual.

(5) When an individual's identity is disclosed under subsection (4) of this section, a health care services provider shall prepare, and include in the permanent records of the health care services provider, a written statement indicating the reasons for the disclosure, the written accounts disclosed and the recipients of the disclosure.

(6) The content of any written account referred to in subsection (2) of this section and held by a health care services provider currently engaged in the treatment of an individual may be disclosed to officers or employees of that provider, its agents or cooperating health care services providers who are currently acting within the official scope of their duties to evaluate treatment programs, to diagnose or treat or to assist in diagnosing or treating an individual when the written account is to be used in the course of diagnosing or treating the individual. Nothing in this subsection prevents the transfer of written accounts referred to in subsection (2) of this section among health care services providers, the Department of Human Services, the Department of Corrections, **the Oregon Health Authority** or a local correctional facility when the transfer is necessary or beneficial to the treatment of an individual.

(7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or an institution operated by the department, nothing in this section prohibits the disclosure of any written account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents, upon request, or the subsequent disclosure to a court, administrative hearings officer, arbitrator or other administrative decision maker.

(8)(a) When an action, suit, claim, arbitration or proceeding involves *[the Department of Human Services or an institution operated by the department]* **the Department of Human Services, the Oregon Health Authority or an institution operated by the department or authority**, nothing in this section prohibits the disclosure of any written account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents.

(b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750 and ORS chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed under this paragraph.

(c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel action taken against staff is limited to written accounts directly relating to alleged action or inaction by staff for which the personnel action was imposed.

(9)(a) The copy of any written account referred to in subsection (2) of this section, upon written request of the individual or a personal representative of the individual, shall be disclosed to the individual or the personal representative of the individual within a reasonable time not to exceed five working days. The individual or the personal representative of the individual shall have the right to timely access to any written accounts.

(b) If the disclosure of psychiatric or psychological information contained in the written account would constitute an immediate and grave detriment to the treatment of the individual, disclosure may be denied, if medically contraindicated by the treating physician or a licensed health care professional in the written account of the individual.

(c) The Department of Corrections may withhold psychiatric or psychological information if:

(A) The information relates to an individual other than the individual seeking it.

(B) Disclosure of the information would constitute a danger to another individual.

(C) Disclosure of the information would compromise the privacy of a confidential source.

(d) However, a written statement of the denial under paragraph (c) of this subsection and the reasons therefor must be entered in the written account.

(10) A health care services provider may require a person requesting disclosure of the contents of a written account under this section to reimburse the provider for the reasonable costs incurred in searching files, abstracting if requested and copying if requested. However, an individual or a personal representative of the individual may not be denied access to written accounts concerning the individual because of inability to pay.

(11) A written account referred to in subsection (2) of this section may not be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by federal, state or local authorities against the individual or to conduct any investigations of the individual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily produces evidence regarding an issue to which a written account referred to in subsection (2) of this section would be relevant, the contents of that written account may be disclosed for use in the proceeding.

(12) Information obtained in the course of diagnosis, evaluation or treatment of an individual that, in the professional judgment of the health care services provider, indicates a clear and immediate danger to others or to society may be reported to the appropriate authority. A decision not to disclose information under this subsection does not subject the provider to any civil liability. Nothing in this subsection may be construed to alter the provisions of ORS 146.750, 146.760, 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

(13) The prohibitions of this section apply to written accounts concerning any individual who has been treated by any health care services provider irrespective of whether or when the individual ceases to receive treatment.

(14) Persons other than the individual or the personal representative of the individual who are granted access under this section to the contents of a written account referred to in subsection (2) of this section may not disclose the contents of the written account to any other person except in accordance with the provisions of this section.

(15) Nothing in this section prevents the Department of Human Services **or the Oregon Health Authority** from disclosing the contents of written accounts in its possession to individuals or agencies with whom children in its custody are placed.

(16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS 192.515, as provided in ORS 192.517.

(17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider must obtain an authorization from an individual or a personal representative of the individual to disclose psychotherapy notes.

(b) A health care services provider may use or disclose psychotherapy notes without obtaining an authorization from the individual or a personal representative of the individual to carry out the following treatment, payment and health care operations:

(A) Use by the originator of the psychotherapy notes for treatment;

(B) Disclosure by the health care services provider for its own training program in which students, trainees or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family or individual counseling; or

(C) Disclosure by the health care services provider to defend itself in a legal action or other proceeding brought by the individual or a personal representative of the individual.

(c) An authorization for the disclosure of psychotherapy notes may not be combined with an authorization for a disclosure of any other individually identifiable health information, but may be combined with another authorization for a disclosure of psychotherapy notes.

SECTION 146. ORS 179.509 is amended to read:

179.509. (1) The superintendent of each state institution shall submit quarterly reports on the number of deaths, including the ages of the deceased, the causes of death and the disposition of the remains, within the institution to the *[Department of Human Services or to the Department of Cor-*

rections] **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, as the case may be, having jurisdiction over the institution.

(2) The [Department of Human Services or the Department of Corrections] **agencies** shall compile the reports described in subsection (1) of this section and submit them quarterly to the offices of the President of the Senate and of the Speaker of the House of Representatives.

SECTION 147. ORS 179.610 is amended to read:

179.610. As used in ORS 179.610 to 179.770, unless the context requires otherwise:

[(1) “Agency” means either the Department of Human Services for a person in a state institution described in ORS 179.321 (1) or the Department of Corrections for a person in a Department of Corrections institution as defined in ORS 421.005.]

[(2)] (1) “Authorized representative” means an individual or entity appointed under authority of ORS chapter 125, as guardian or conservator of a person, who has the ability to control the person’s finances, and any other individual or entity holding funds or receiving benefits or income on behalf of any person.

[(3)] (2) “Care” means all services rendered by the state institutions as described in ORS 179.321 or by the [Department of Human Services or the Department of Corrections] **Department of Corrections, Department of Human Services or Oregon Health Authority** on behalf of those institutions. These services include, but are not limited to, such items as medical care, room, board, administrative costs and other costs not otherwise excluded by law.

[(4)] (3) “Decedent’s estate” has the meaning given “estate” in ORS 111.005 (15).

[(5)] (4) “Person,” “person in a state institution” or “person at a state institution,” or any similar phrase, means an individual who is or has been at a state institution described in ORS 179.321.

[(6)] (5) “Personal estate” means all income and benefits as well as all assets, including all personal and real property of a living person, and includes assets held by the person’s authorized representative and all other assets held by any other individual or entity holding funds or receiving benefits or income on behalf of any person.

SECTION 148. ORS 179.620 is amended to read:

179.620. (1) A person and the personal estate of the person, or a decedent’s estate, is liable for the full cost of care. Full cost of care is established according to ORS 179.701.

(2) While the person is liable for the full cost of care, the maximum amount a person is required to pay toward the full cost of care shall be determined according to the person’s ability to pay. Ability to pay is determined as provided in ORS 179.640.

(3) Upon the death of a person, the decedent’s estate shall be liable for any unpaid cost of care. The liability of the decedent’s estate is limited to the cost of care incurred on or after July 24, 1979. The decedent’s estate shall not include assets placed in trust for the person by other persons. Collection of any amount from a decedent’s estate shall be pursuant to ORS 179.740.

(4) Regardless of subsection (1) of this section and ORS 179.610 [(6)] (5), assets held in trust by a trustee for a person are subject to laws generally applicable to trusts.

(5) Notwithstanding subsections (1) and (3) of this section, [neither the Department of Human Services nor the Department of Corrections may] **the Department of Corrections, the Department of Human Services and the Oregon Health Authority may not** collect the cost of care from:

(a) Any assets received by or owing to a person and the personal estate of the person, or the decedent’s estate, as compensation from the state for injury, death or, if the collection is being made by the Department of Corrections, the false imprisonment of the person that occurred when the person was in a state institution listed in ORS 179.321 and for which the state admits liability or is found liable through adjudication; and

(b) Any real or personal property of the personal estate of the person, or the decedent’s estate, that the person or an authorized representative of the person can demonstrate was purchased solely with assets referred to in paragraph (a) of this subsection or partially with such assets, to the extent such assets were used in the purchase.

SECTION 149. ORS 179.640 is amended to read:

179.640. (1)(a) [Both the Department of Human Services and the Department of Corrections] **The Department of Corrections, the Department of Human Services and the Oregon Health Authority** shall establish rules for determining ability to pay for persons in their respective institutions. The rules adopted by each agency shall require, in addition to other relevant factors, consideration of the personal estate, the person's need for funds for personal support after release, and the availability of third-party benefits such as, but not limited to, Medicare or private insurance. Each agency may also consider the probable length of stay at the state institution. Nothing in this section requires the Department of Corrections to investigate a person's ability to pay or to issue an ability-to-pay order.

(b) When adopting rules under paragraph (a) of this subsection, the Department of Corrections shall consider the person's needs for funds to pay for the support of the person's children and to pay any monetary obligations imposed on the person as a result of the person's conviction.

(2) In determining a person's ability to pay, [neither agency] **none of the agencies** may consider as part of the personal estate of the person or the decedent's estate:

(a) Any assets received by or owing to the person and the personal estate of the person, or the decedent's estate, as compensation from the state for injury, death or, if the collection is being made by the Department of Corrections, the false imprisonment of the person that occurred when the person was in a state institution listed in ORS 179.321 and for which the state admits liability or is found liable through adjudication; and

(b) Any real or personal property that the person or an authorized representative of the person can demonstrate was purchased solely with assets referred to in paragraph (a) of this subsection or partially with such assets, to the extent such assets were used in the purchase.

(3) A person and the authorized representative of the person, if any, shall provide all financial information requested by the agency that is necessary to determine the person's ability to pay. To determine ability to pay, the agency may use any information available to the agency, including information provided by the Department of Revenue from personal income tax returns pursuant to ORS 314.840, and elderly rental assistance claims. Upon request, the Department of Revenue shall release copies of tax returns to the agency. When the person or the person's authorized representative fails to provide evidence to demonstrate an inability to pay full cost of care, the agency may determine the person has the ability to pay the full cost of care.

(4) The agency shall provide actual notice to the person and any authorized representative, if known to the agency, of its determination by issuing an ability-to-pay order. The order shall state the person's full liability and the person's determined ability to pay. Actual notice means receipt by the person and the authorized representative of notice. The notice shall include a copy of the ability-to-pay order, a description of the person's appeal rights and the date upon which appeal rights terminate and state the address where a request for hearing may be mailed or delivered. At any time, the agency may reissue an ability-to-pay order to notify an authorized representative as provided by ORS 179.653 (4).

(5) At any time during the person's stay at the state institution or within 36 months from the date the person is released, if the agency receives new financial information that shows a change in the person's financial circumstances, the agency shall consider the changed circumstances and issue a new ability-to-pay order.

(6) Orders issued after the person is released may not require the person to make payments toward the cost of care for more than 36 consecutive months following release. However, the agency may collect beyond the 36-month period any payments that became due but were not paid within the 36 months following release. Any remaining balance of full cost of care shall be collected as provided in ORS 179.740.

(7) Notwithstanding ORS 183.315 (5), if a person or authorized representative disagrees with any ability-to-pay order issued pursuant to this section, the person or authorized representative may request a contested case hearing. To the extent practical, the hearing will be held at a location convenient to the person or the authorized representative. The request must be postmarked within 60 days from the date of the mailing of the ability-to-pay order. If the person or the authorized repre-

sentative makes a timely request for a contested case hearing, the hearing and any appeal of the final hearing order shall be governed by ORS 183.413 to 183.497. If the person or the authorized representative fails to make a timely request for a contested case hearing, the ability-to-pay order shall be final and not subject to judicial review, except as subsequently modified by the agency as provided in subsection (5) of this section.

(8) On appeal, regardless of other information presented, payment of the full cost of care may be ordered if the person or the authorized representative refuses to produce financial information that the Hearings Officer or administrative law judge determines is relevant and must be produced.

SECTION 150. ORS 179.653 is amended to read:

179.653. (1) If any person or authorized representative refuses to pay for the cost of care as ordered by the [*Department of Human Services or the Department of Corrections*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority** under ORS 179.640, the amount unpaid plus interest shall be a lien in favor of the State of Oregon. The lien shall arise as each payment is due under the order and shall continue until the liability with interest is satisfied. The lien shall be upon the title to and interest in the real and personal property of the personal estate.

(2) Prior to the filing of a distraint warrant as provided in ORS 179.655 (2), the lien shall only be valid against:

- (a) Property of the person;
- (b) Assets held by any authorized representative bound by the ability-to-pay order; and
- (c) Assets subject to lien held by any person or entity having actual knowledge of the ability-to-pay order or the lien.

(3) Regardless of any other provision of law or statute that provides a procedure for establishing obligations, including the claim and payment provisions of ORS chapter 125, an authorized representative who has received notice and had an opportunity to request a contested case hearing shall comply with an ability-to-pay order upon demand by the agency. The agency may issue the demand any time after the order becomes final.

(4) An authorized representative who has not had an opportunity to request a contested case hearing, either because the authorized representative was not appointed at the time the ability-to-pay order became final, or was not given notice of the ability-to-pay order as required by ORS 179.640 (4), shall not be bound by the order of the agency. To bind the authorized representative, the ability-to-pay order must be reissued and notice provided to the authorized representative pursuant to ORS 179.640 (4). The authorized representative shall have the same appeal rights as if the order had originally been issued to the authorized representative. After the order becomes final, the authorized representative shall be bound as provided in subsection (3) of this section. The agency may not issue an execution of a lien or foreclose against property held by or in the control of the authorized representative until the authorized representative is bound by the order of the agency.

(5) An authorized representative who is a trustee shall only be bound to the extent that the final order specifically finds that the trust assets of a trust fund are subject to claim by the agency.

(6) If the authorized representative does not comply with the demand, the agency may file with the probate court a motion to require the authorized representative to comply. If the authorized representative is a conservator or guardian appointed under ORS chapter 125, the motion shall be filed in that proceeding. The motion shall be accompanied by an affidavit stating that the order is final, that demand has been made on the authorized representative and that the order has not been complied with.

(7) The authorized representative may object to the motion only on grounds that the order is not final, that the order is not binding on the authorized representative as provided in this section or that all required payments have been made. The objection must be by affidavit.

(8) If the authorized representative objects by affidavit, the court shall hear the motion. If the court determines that the ability-to-pay order is final and binding on the authorized representative and that all required payments have not been made, the court shall order the authorized representative to comply with the ability-to-pay order.

(9) If the authorized representative fails to object by affidavit within 15 days of the filing of the motion, the court shall order the authorized representative to comply with the order. An authorized representative who willfully fails or refuses to comply may be found in contempt of court and may be held personally responsible.

(10) Nothing in this section shall affect the requirement that the agency issue a new order in accordance with ORS 179.640 (5) if financial circumstances have changed.

SECTION 151. ORS 179.655 is amended to read:

179.655. (1) If any amount due the [*Department of Human Services or the Department of Corrections*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority** for the cost of care of a person is not paid within 30 days after it becomes due, and no provision is made to secure the payment by bond, deposit or otherwise, pursuant to rules adopted by the appropriate agency, the agency may issue a distraint warrant directed to any county of the state.

(2) After the receipt of the distraint warrant, the clerk of the county shall enter in the County Clerk Lien Record the name of the person, the amount for which the distraint warrant is issued and the date the distraint warrant is recorded. The amount of the distraint warrant shall become a lien upon the title to and interest in any property owned or later acquired by the debtor against whom it is issued, and it may be enforced by the agency in the same manner as a judgment of the circuit court.

(3) In the event that an ability-to-pay order issued under ORS 179.640 (4) or (5) becomes final, and supersedes a previous final ability-to-pay order on which a distraint warrant had been issued, the agency shall issue a new distraint warrant superseding the previous distraint warrant, and the lien shall conform to the new order.

(4) The agency may direct a copy of the distraint warrant to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for the payment of the amount due, with interest, collection charge and the sheriff's fee. The sheriff shall return the distraint warrant to the agency and pay to it the money collected not less than 60 days from the date the copy of the distraint warrant was directed to the sheriff.

(5) The agency may issue the directive provided in subsection (4) of this section to any agent of the agency. In executing the distraint warrant, the agent shall have the same powers conferred by law upon sheriffs. However, the agent is not entitled to any fee or compensation in excess of actual expenses incurred in the performance of this duty.

SECTION 152. ORS 179.660 is amended to read:

179.660. If the [*Department of Human Services or the Department of Corrections*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority** believes a person at one of its state institutions needs a guardian or conservator, or both, and one has not been appointed, the agency may request that the district attorney institute proper proceedings for this appointment in the court having probate jurisdiction. The county of which the person is a resident, or was a resident at the time of admittance, shall be the basis for determining the appropriate district attorney to be contacted.

SECTION 153. ORS 179.701 is amended to read:

179.701. The cost-of-care rates for a person shall be determined by the [*Department of Human Services or the Department of Corrections*] **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, as appropriate. The rates established shall be reasonably related to current costs of the institutions as described in ORS 179.321. Current costs shall exclude costs of outpatient services as defined in ORS 430.010 [(4)] (5) and any other costs not directly related to the care for a person at a state institution.

SECTION 154. ORS 179.711 is amended to read:

179.711. (1) Remittance of amounts due for care of persons at state institutions as provided in ORS 179.610 to 179.770 shall be made to the [*Department of Human Services or the Department of*

Corrections] **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, as appropriate.

(2) The agency shall refund any unearned payment for the care of a person at a state institution where payment has been made in advance and the person dies or is discharged before the end of the period for which payment was made. Any refund shall be paid to the person, to the authorized representative of the person or to the decedent's estate if the person has died. All claims for refunds approved by the agency shall be paid as provided in ORS 293.295 to 293.462. Any amounts necessary for payment of refunds are appropriated from the money collected by that agency under the provisions of ORS 179.610 to 179.770.

SECTION 155. ORS 179.731 is amended to read:

179.731. If the [*Department of Human Services or the Department of Corrections]* **Department of Corrections, the Department of Human Services or the Oregon Health Authority** determines that collection of the amount payable under ORS 179.610 to 179.770 for the cost of care of a person would be detrimental to the best interests of the person or the agency, the agency may waive the collection of part or all of the amount otherwise payable.

SECTION 156. ORS 179.740 is amended to read:

179.740. (1) The [*Department of Human Services or the Department of Corrections]* **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, as appropriate, may file a claim against the decedent's estate for any unpaid charges under ORS 179.620 (3). This shall be done in the same manner as claims of creditors and with the priorities provided in ORS 115.125.

(2) If, within 90 days following the person's death, the person's estate is not otherwise being probated, the agency may petition any court of competent jurisdiction for the issuance of letters of administration or testamentary. This action would be for the purpose of collecting the full amount of unpaid cost of care as determined by ORS 179.701 and limited by ORS 179.620 (3). However, the agency may not file a petition under this subsection until at least 90 days after the death of the person who was at the state institution and then only in the event that the person's estate is not otherwise being probated.

(3) The agency may settle any claim against the decedent's estate during the pendency of the probate proceeding by accepting other security or in any other equitable manner. The agency may waive all or part of the claim if it finds collection of this amount due to be inequitable.

(4) The agency may not recover amounts that exceed the total cost of care of the deceased person as computed under ORS 179.701 and limited by ORS 179.620 (3).

SECTION 157. ORS 179.745 is amended to read:

179.745. The State of Oregon, by and through the [*Department of Human Services or the Department of Corrections]* **Department of Corrections, the Department of Human Services or the Oregon Health Authority**, may take title to real and personal property to carry out the provisions of ORS 179.620, 179.653, 179.655 and 179.740. With the written consent of the owner of real property or an authorized representative of the owner, the agency may transfer real property under the provisions of ORS 270.100 to 270.190. The agency may transfer personal property under rules adopted by the agency. The proceeds, less costs, of any real or personal property transferred by the agency under this section shall be credited to and deposited in the [*Mental Health and Developmental Disability Services Account established by ORS 430.180 or the Department of Corrections Account established by ORS 423.097*] **Department of Corrections Account, the Department of Human Services Account or the Oregon Health Authority Fund**, as appropriate.

SECTION 158. ORS 179.770 is amended to read:

179.770. (1) In accordance with any applicable provisions of ORS chapter 183, [*both the Department of Human Services and the Department of Corrections*] **the Department of Corrections, the Department of Human Services and the Oregon Health Authority** may adopt any rules necessary to carry out ORS 179.610 to 179.770.

(2) Subject to any applicable provision of the State Personnel Relations Law, the agency may employ employees necessary to carry out ORS 179.610 to 179.770.

SECTION 159. ORS 181.537 is amended to read:

181.537. (1) As used in this section:

(a) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities.

(b) "Qualified entity" means a community mental health [*and developmental disabilities program,*] **program, a community developmental disabilities program,** a local health department or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

(2) The Department of Human Services, **the Oregon Health Authority** and the Employment Department may require the fingerprints of a person for the purpose of requesting a state or nationwide criminal records check of the person under ORS 181.534:

(a) For agency employment purposes;

(b) For the purposes of licensing, certifying, registering or otherwise regulating or administering programs, persons or qualified entities that provide care;

(c) For the purposes of employment decisions by or for qualified entities that are regulated or otherwise subject to oversight by the Department of Human Services **or the Oregon Health Authority** and that provide care; or

(d) For the purposes of employment decisions made by a mass transit district or transportation district for qualified entities that, under contracts with the district or the [*Department of Human Services*] **Oregon Health Authority**, employ persons to operate motor vehicles for the transportation of medical assistance program clients.

(3) The Department of Human Services **and the Oregon Health Authority** may conduct criminal records checks on a person through the Law Enforcement Data System maintained by the Department of State Police, if deemed necessary by the Department of Human Services **or the Oregon Health Authority** to protect children, elderly persons, persons with disabilities or other vulnerable persons.

(4) The Department of Human Services **and the Oregon Health Authority** may furnish to qualified entities, in accordance with the [*Department of Human Services*] rules **of the Department of Human Services or the Oregon Health Authority** and the rules of the Department of State Police, information received from the Law Enforcement Data System. However, any criminal offender records and information furnished to the Department of Human Services **or the Oregon Health Authority** by the Federal Bureau of Investigation through the Department of State Police may not be disseminated to qualified entities.

(5) A qualified entity, using rules adopted by the Department of Human Services **or the Oregon Health Authority**, shall determine under this section whether a person is fit to hold a position, provide services, be employed or, if the qualified entity has authority to make such a determination, be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS 181.534, any false statements made by the person regarding the criminal history of the person and any refusal to submit or consent to a criminal records check including fingerprint identification. If a person is determined to be unfit, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

(6) In making the fitness determination under subsection (5) of this section, the qualified entity shall consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the person's present or proposed position, services, employment, license, certification or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification or registration. Intervening circumstances include but

are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(7) The Department of Human Services, **the Oregon Health Authority** and the Employment Department may make fitness determinations based on criminal offender records and information furnished by the Federal Bureau of Investigation through the Department of State Police only as provided in ORS 181.534.

(8) A qualified entity and an employee of a qualified entity acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position, provide services or be employed, licensed, certified or registered. A qualified entity, employee of a qualified entity acting within the course and scope of employment and an employer or employer's agent who in good faith comply with this section and the decision of the qualified entity or employee of the qualified entity acting within the course and scope of employment are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. An employee of the state acting within the course and scope of employment is not liable for defamation or invasion of privacy in connection with the lawful dissemination of information lawfully obtained under this section.

(9) The Department of Human Services **and the Oregon Health Authority** shall develop [*a system that maintains*] **systems that maintain** information regarding criminal records checks in order to minimize the administrative burden imposed by this section and ORS 181.534. Records maintained under this subsection are confidential and may not be disseminated except for the purposes of this section and in accordance with the rules of the Department of Human Services, **the Oregon Health Authority** and the Department of State Police. Nothing in this subsection permits the Department of Human Services to retain fingerprint cards obtained pursuant to this section.

(10) In addition to the rules required by ORS 181.534, the Department of Human Services **and the Oregon Health Authority**, in consultation with the Department of State Police, shall adopt rules:

- (a) Specifying which qualified entities are subject to this section;
- (b) Specifying which qualified entities may request criminal offender information;
- (c) Specifying which qualified entities are responsible for deciding whether a subject individual is not fit for a position, service, license, certification, registration or employment; and
- (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under subsection (5) of this section using the information maintained by the Department of Human Services **and the Oregon Health Authority** pursuant to subsection (9) of this section.

(11) If a person refuses to consent to the criminal records check or refuses to be fingerprinted, the qualified entity shall deny or terminate the employment of the person, or revoke or deny any applicable position, authority to provide services, employment, license, certification or registration.

(12) If the qualified entity requires a criminal records check of employees or other persons, the application forms of the qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check.

SECTION 160. ORS 181.637 is amended to read:

181.637. (1) The Board on Public Safety Standards and Training shall establish the following policy committees:

- (a) Corrections Policy Committee;
- (b) Fire Policy Committee;
- (c) Police Policy Committee;
- (d) Telecommunications Policy Committee; and
- (e) Private Security Policy Committee.

(2) The members of each policy committee shall select a chairperson and vice chairperson for the policy committee. Only members of the policy committee who are also members of the board are

eligible to serve as a chairperson or vice chairperson. The vice chairperson may act as chairperson in the absence of the chairperson.

(3) The Corrections Policy Committee consists of:

- (a) All of the board members who represent the corrections discipline;
- (b) The chief administrative officer of the training division of the Department of Corrections;
- (c) A security manager from the Department of Corrections; and
- (d) The following, who may not be current board members, appointed by the chairperson of the board:

board:

- (A) One person recommended by and representing the Oregon State Sheriffs' Association;
- (B) Two persons recommended by and representing the Oregon Jail Managers' Association;
- (C) One person recommended by and representing a statewide association of community corrections directors;
- (D) One nonmanagement corrections officer employed by the Department of Corrections; and
- (E) One corrections officer who is a female, who is employed by the Department of Corrections at a women's correctional facility and who is a member of a bargaining unit.

(4) The Fire Policy Committee consists of:

- (a) All of the board members who represent the fire service discipline; and
- (b) The following, who may not be current board members, appointed by the chairperson of the board:

board:

- (A) One person recommended by and representing a statewide association of fire instructors;
- (B) One person recommended by and representing a statewide association of fire marshals;
- (C) One person recommended by and representing community college fire programs; and
- (D) One nonmanagement firefighter recommended by a statewide organization of firefighters.

(5) The Police Policy Committee consists of:

- (a) All of the board members who represent the law enforcement discipline; and
- (b) The following, who may not be current board members, appointed by the chairperson of the board:

board:

- (A) One person recommended by and representing the Oregon Association Chiefs of Police;
- (B) Two persons recommended by and representing the Oregon State Sheriffs' Association;
- (C) One command officer recommended by and representing the Oregon State Police; and
- (D) One nonmanagement law enforcement officer.

(6) The Telecommunications Policy Committee consists of:

- (a) All of the board members who represent the telecommunications discipline; and
- (b) The following, who may not be current board members, appointed by the chairperson of the board:

board:

- (A) Two persons recommended by and representing a statewide association of public safety communications officers;
- (B) One person recommended by and representing the Oregon Association Chiefs of Police;
- (C) One person recommended by and representing the Oregon State Police;
- (D) Two persons representing telecommunicators;
- (E) One person recommended by and representing the Oregon State Sheriffs' Association;
- (F) One person recommended by and representing the Oregon Fire Chiefs' Association;
- (G) One person recommended by and representing the Emergency Medical Services and Trauma Systems Program of the [*Department of Human Services*] **Oregon Health Authority**; and

(H) One person representing paramedics and recommended by a statewide association dealing with fire medical issues.

(7) The Private Security Policy Committee consists of:

- (a) All of the board members who represent the private security industry; and
- (b) The following, who may not be current board members, appointed by the chairperson of the board:

board:

- (A) One person representing unarmed private security professionals;
- (B) One person representing armed private security professionals;

- (C) One person representing the health care industry;
- (D) One person representing the manufacturing industry;
- (E) One person representing the retail industry;
- (F) One person representing the hospitality industry;
- (G) One person representing private business or a governmental entity that utilizes private security services;
- (H) One person representing persons who monitor alarm systems;
- (I) Two persons who are investigators licensed under ORS 703.430, one of whom is recommended by the Oregon State Bar and one of whom is in private practice; and
- (J) One person who represents the public at large and who is not related within the second degree by affinity or consanguinity to a person who is employed or doing business as a private security professional or executive manager, as defined in ORS 181.870, or as an investigator, as defined in ORS 703.401.

(8) In making appointments to the policy committees under this section, the chairperson of the board shall seek to reflect the diversity of the state's population. An appointment made by the chairperson of the board must be ratified by the board before the appointment is effective. The chairperson of the board may remove an appointed member for just cause. An appointment to a policy committee that is based on the member's employment is automatically revoked if the member changes employment. The chairperson of the board shall fill a vacancy in the same manner as making an initial appointment. The term of an appointed member is two years. An appointed member may be appointed to a second term.

(9) A policy committee may meet at such times and places as determined by the policy committee in consultation with the Department of Public Safety Standards and Training. A majority of a policy committee constitutes a quorum to conduct business. A policy committee may create subcommittees if needed.

(10)(a) Each policy committee shall develop policies, requirements, standards and rules relating to its specific discipline. A policy committee shall submit its policies, requirements, standards and rules to the board for the board's consideration. When a policy committee submits a policy, requirement, standard or rule to the board for the board's consideration, the board shall:

- (A) Approve the policy, requirement, standard or rule;
- (B) Disapprove the policy, requirement, standard or rule; or
- (C) Defer a decision and return the matter to the policy committee for revision or reconsideration.

(b) The board may defer a decision and return a matter submitted by a policy committee under paragraph (a) of this subsection only once. If a policy, requirement, standard or rule that was returned to a policy committee is resubmitted to the board, the board shall take all actions necessary to implement the policy, requirement, standard or rule unless the board disapproves the policy, requirement, standard or rule.

(c) Disapproval of a policy, requirement, standard or rule under paragraph (a) or (b) of this subsection requires a two-thirds vote by the members of the board.

(11) At any time after submitting a matter to the board, the chairperson of the policy committee may withdraw the matter from the board's consideration.

SECTION 161. ORS 182.415 is amended to read:

182.415. As used in ORS 182.415 to 182.435 and 240.086 unless the context requires otherwise:

(1) "Furnishings" includes furniture usually used in connection with occupancy of a household but does not include rugs, draperies, range, refrigerator, washer, dryer or any item of furnishings received by the state or one of its agencies as a gift, nor does it include any furniture purchased for the state-owned residence required in relation to the official duties of an institutional executive or the Chancellor of the Department of Higher Education prior to September 9, 1971.

(2) "Housing" includes single and multiple family dwellings, apartments, and manufactured dwellings and manufactured dwelling pads, available on a monthly tenancy but does not include

guard stations maintained by the State Forestry Department or dormitory facilities at any state institution or at any state institution of higher education.

(3) "Dormitory" includes any facility which houses students and those facilities used primarily for sleeping purposes by the employees of the Department of Human Services **or the Oregon Health Authority**.

(4) "State agency" has the same meaning as in ORS 291.002.

SECTION 162. ORS 182.515 is amended to read:

182.515. As used in this section and ORS 182.525:

(1) "Agency" means:

(a) The Department of Corrections;

(b) The Oregon Youth Authority;

(c) The State Commission on Children and Families; and

(d) That part of the [*Department of Human Services*] **Oregon Health Authority** that deals with mental health and addiction issues.

(2) "Cost effective" means that cost savings realized over a reasonable period of time are greater than costs.

(3) "Evidence-based program" means a program that:

(a) Incorporates significant and relevant practices based on scientifically based research; and

(b) Is cost effective.

(4)(a) "Program" means a treatment or intervention program or service that is intended to:

(A) Reduce the propensity of a person to commit crimes;

(B) Improve the mental health of a person with the result of reducing the likelihood that the person will commit a crime or need emergency mental health services; or

(C) Reduce the propensity of a person who is less than 18 years of age to engage in antisocial behavior with the result of reducing the likelihood that the person will become a juvenile offender.

(b) "Program" does not include:

(A) An educational program or service that an agency is required to provide to meet educational requirements imposed by state law; or

(B) A program that provides basic medical services.

(5) "Scientifically based research" means research that obtains reliable and valid knowledge by:

(a) Employing systematic, empirical methods that draw on observation or experiment;

(b) Involving rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; and

(c) Relying on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations and across studies by the same or different investigators.

SECTION 163. ORS 182.535 is amended to read:

182.535. For purposes of ORS 182.535 to 182.550, "natural resource agency" means the Department of Environmental Quality, the State Department of Agriculture, the Water Resources Department, the State Department of Fish and Wildlife, the State Forestry Department, the Department of State Lands, the Department of Education, the State Department of Geology and Mineral Industries, the Department of Land Conservation and Development, the State Marine Board, the Public Utility Commission, the Department of Transportation, the State Fire Marshal and the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 164. ORS 184.345 is amended to read:

184.345. (1) The Oregon Department of Administrative Services shall provide on a reimbursable basis administrative and other services, as agreed to, to:

(a) The Department of Corrections;

(b) The Department of Human Services; [*and*]

(c) The Oregon Health Authority; and

[*(c)*] **(d) The State Board of Education.**

(2) In addition to its duties under subsection (1) of this section, the Oregon Department of Administrative Services shall provide clerical support to the Energy Facility Siting Council.

SECTION 165. ORS 192.517 is amended to read:

192.517. (1) The system designated to protect and advocate for the rights of individuals shall have access to all records of:

(a) Any individual who is a client of the system if the individual or the legal guardian or other legal representative of the individual has authorized the system to have such access;

(b) Any individual, including an individual who has died or whose whereabouts are unknown:

(A) If the individual by reason of the individual's mental or physical condition or age is unable to authorize such access;

(B) If the individual does not have a legal guardian or other legal representative, or the state or a political subdivision of this state is the legal guardian of the individual; and

(C) If a complaint regarding the rights or safety of the individual has been received by the system or if, as a result of monitoring or other activities which result from a complaint or other evidence, there is probable cause to believe that the individual has been subject to abuse or neglect; and

(c) Any individual who has a legal guardian or other legal representative, who is the subject of a complaint of abuse or neglect received by the system, or whose health and safety is believed with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal representative:

(A) Has been contacted by the system upon receipt of the name and address of the legal guardian or other legal representative;

(B) Has been offered assistance by the system to resolve the situation; and

(C) Has failed or refused to act on behalf of the individual.

(2) The system shall have access to the name, address and telephone number of any legal guardian or other legal representative of an individual.

(3) The system that obtains access to records under this section shall maintain the confidentiality of the records to the same extent as is required of the provider of the services, except as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806) as in effect on January 1, 2003.

(4) The system shall have reasonable access to facilities, including the residents and staff of the facilities.

(5) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055 [(9)] (10).

SECTION 166. ORS 192.519 is amended to read:

192.519. As used in ORS 192.518 to 192.529:

(1) "Authorization" means a document written in plain language that contains at least the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;

(b) The name or other specific identification of the person or persons authorized to make the requested use or disclosure;

(c) The name or other specific identification of the person or persons to whom the covered entity may make the requested use or disclosure;

(d) A description of each purpose of the requested use or disclosure, including but not limited to a statement that the use or disclosure is at the request of the individual;

(e) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;

(f) The signature of the individual or personal representative of the individual and the date;

(g) A description of the authority of the personal representative, if applicable; and

(h) Statements adequate to place the individual on notice of the following:

(A) The individual's right to revoke the authorization in writing;

- (B) The exceptions to the right to revoke the authorization;
 - (C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization; and
 - (D) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected.
- (2) "Covered entity" means:
- (a) A state health plan;
 - (b) A health insurer;
 - (c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.518 to 192.529; or
 - (d) A health care clearinghouse.
- (3) "Health care" means care, services or supplies related to the health of an individual.
- (4) "Health care operations" includes but is not limited to:
- (a) Quality assessment, accreditation, auditing and improvement activities;
 - (b) Case management and care coordination;
 - (c) Reviewing the competence, qualifications or performance of health care providers or health insurers;
 - (d) Underwriting activities;
 - (e) Arranging for legal services;
 - (f) Business planning;
 - (g) Customer services;
 - (h) Resolving internal grievances;
 - (i) Creating de-identified information; and
 - (j) Fundraising.
- (5) "Health care provider" includes but is not limited to:
- (a) A psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist;
 - (b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;
 - (c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;
 - (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
 - (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;
 - (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;
 - (g) An emergency medical technician certified under ORS chapter 682;
 - (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
 - (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;
 - (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;
 - (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;
 - (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;
 - (m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the radiologic technologist;

(o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the respiratory care practitioner;

(p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

(q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;

(r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

(s) A health care facility as defined in ORS 442.015;

(t) A home health agency as defined in ORS 443.005;

(u) A hospice program as defined in ORS 443.850;

(v) A clinical laboratory as defined in ORS 438.010;

(w) A pharmacy as defined in ORS 689.005;

(x) A diabetes self-management program as defined in ORS 743A.184; and

(y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(6) "Health information" means any oral or written information in any form or medium that:

(a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(7) "Health insurer" means:

(a) An insurer as defined in ORS 731.106 who offers:

(A) A health benefit plan as defined in ORS 743.730;

(B) A short term health insurance policy, the duration of which does not exceed six months including renewals;

(C) A student health insurance policy;

(D) A Medicare supplemental policy; or

(E) A dental only policy.

(b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board under ORS 735.600 to 735.650.

(8) "Individually identifiable health information" means any oral or written health information in any form or medium that is:

(a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(9) "Payment" includes but is not limited to:

(a) Efforts to obtain premiums or reimbursement;

(b) Determining eligibility or coverage;

(c) Billing activities;

(d) Claims management;

(e) Reviewing health care to determine medical necessity;

(f) Utilization review; and

(g) Disclosures to consumer reporting agencies.

(10) "Personal representative" includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;

(c) A person appointed as a personal representative under ORS chapter 113; and

(d) A person described in ORS 192.526.

(11)(a) "Protected health information" means individually identifiable health information that is maintained or transmitted in any form of electronic or other medium by a covered entity.

(b) "Protected health information" does not mean individually identifiable health information in:

(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

(C) Employment records held by a covered entity in its role as employer.

(12) "State health plan" means:

(a) The state Medicaid program;

(b) The Oregon State Children's Health Insurance Program; [or]

(c) The Family Health Insurance Assistance Program established in ORS 735.720 to 735.740[.];

or

(d) Any medical assistance or premium assistance program operated by the Oregon Health Authority.

(13) "Treatment" includes but is not limited to:

(a) The provision, coordination or management of health care; and

(b) Consultations and referrals between health care providers.

SECTION 167. ORS 192.527 is amended to read:

192.527. (1) Notwithstanding ORS 179.505, a state health plan or a prepaid managed care health services organization may disclose the protected health information of an individual listed in subsection (2) of this section, without obtaining an authorization from the individual or a personal representative of the individual, to another prepaid managed care health services organization for treatment activities of a prepaid managed care health services organization when the prepaid managed care health services organization is providing behavioral or physical health care services to the individual.

(2) The protected health information that may be disclosed pursuant to subsection (1) of this section includes the following, as defined by the [Department of Human Services] **Oregon Health Authority** by rule:

(a) [Oregon Health Plan member] **Medicaid recipient** name;

(b) Medicaid recipient number;

(c) Performing provider number;

(d) Hospital provider name;

(e) Attending physician;

(f) Diagnosis;

(g) Date or dates of service;

(h) Procedure code;

(i) Revenue code;

(j) Quantity of units of service provided; or

(k) Medication prescription and monitoring.

(3) As used in this section, "prepaid managed care health services organization" has the meaning given that term in ORS 414.736.

SECTION 168. ORS 192.535 is amended to read:

192.535. (1) A person may not obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent of the individual or the individual's representative, except:

(a) As authorized by ORS 181.085 or comparable provisions of federal criminal law relating to the identification of persons, or for the purpose of establishing the identity of a person in the course of an investigation conducted by a law enforcement agency, a district attorney, a medical examiner or the Criminal Justice Division of the Department of Justice;

(b) For anonymous research or coded research conducted under conditions described in ORS 192.537 (2), after notification pursuant to ORS 192.538 or pursuant to ORS 192.547 (7)(b);

(c) As permitted by rules of the [*Department of Human Services*] **Oregon Health Authority** for identification of deceased individuals;

(d) As permitted by rules of the [*Department of Human Services*] **Oregon Health Authority** for newborn screening procedures;

(e) As authorized by statute for the purpose of establishing paternity; or

(f) For the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent.

(2) Except as provided in subsection (3) of this section, a physician licensed under ORS chapter 677 shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 677.097. Except as provided in subsection (3) of this section, any other licensed health care provider or facility must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in a manner substantially similar to that provided by ORS 677.097 for physicians.

(3) A person conducting research shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 192.547.

(4) Except as provided in ORS 746.135 (1), any person not described in subsection (2) or (3) of this section must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by rules adopted by the [*Department of Human Services*] **Oregon Health Authority**.

(5) The [*Department of Human Services*] **Oregon Health Authority** may not adopt rules under subsection (1)(d) of this section that would require the providing of a DNA sample for the purpose of obtaining complete genetic information used to screen all newborns.

SECTION 169. ORS 192.537 is amended to read:

192.537. (1) Subject to the provisions of ORS 192.531 to 192.549, 659A.303 and 746.135, an individual's genetic information and DNA sample are private and must be protected, and an individual has a right to the protection of that privacy. Any person authorized by law or by an individual or an individual's representative to obtain, retain or use an individual's genetic information or any DNA sample must maintain the confidentiality of the information or sample and protect the information or sample from unauthorized disclosure or misuse.

(2)(a) A person may use an individual's DNA sample or genetic information that is derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research only if the individual:

(A) Has granted informed consent for the specific anonymous research or coded research project;

(B) Has granted consent for genetic research generally;

(C) Was notified in accordance with ORS 192.538 that the individual's biological specimen or clinical individually identifiable health information may be used for anonymous research or coded research and the individual did not, at the time of notification, request that the biological specimen or clinical individually identifiable health information not be used for anonymous research or coded research; or

(D) Was not notified, due to emergency circumstances, in accordance with ORS 192.538 that the individual's biological specimen or clinical individually identifiable health information may be used for anonymous research or coded research and the individual died before receiving the notice.

(b) Paragraph (a) of this subsection does not apply to biological specimens or clinical individually identifiable health information obtained before July 29, 2005, if an institutional review board operating under ORS 192.547 (1)(b) meets the requirements described in ORS 192.547 (7)(b).

(3) A person may not retain another individual's genetic information or DNA sample without first obtaining authorization from the individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a county multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Retention is permitted by rules of the [*Department of Human Services*] **Oregon Health Authority** for identification of, or testing to benefit blood relatives of, deceased individuals;

(d) Retention is permitted by rules of the [*Department of Human Services*] **authority** for newborn screening procedures; or

(e) Retention is for anonymous research or coded research conducted after notification or with consent pursuant to subsection (2) of this section or ORS 192.538.

(4) The DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of that individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a county multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions; or

(c) Retention is for anonymous research or coded research conducted after notification or with consent pursuant to subsection (2) of this section or ORS 192.538.

(5) A DNA sample from an individual that is the subject of a research project, other than an anonymous research project, shall be destroyed promptly upon completion of the project or withdrawal of the individual from the project, whichever occurs first, unless the individual or the individual's representative directs otherwise by informed consent.

(6) A DNA sample from an individual for insurance or employment purposes shall be destroyed promptly after the purpose for which the sample was obtained has been accomplished unless retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil, criminal and juvenile proceedings.

(7) An individual or an individual's representative, promptly upon request, may inspect, request correction of and obtain genetic information from the records of the individual.

(8) Subject to the provisions of ORS 192.531 to 192.549, and to policies adopted by the person in possession of a DNA sample, an individual or the individual's representative may request that the individual's DNA sample be made available for additional genetic testing for medical diagnostic purposes. If the individual is deceased and has not designated a representative to act on behalf of the individual after death, a request under this subsection may be made by the closest surviving blood relative of the decedent or, if there is more than one surviving blood relative of the same degree of relationship to the decedent, by the majority of the surviving closest blood relatives of the decedent.

(9) The [*Department of Human Services*] **Oregon Health Authority** shall coordinate the implementation of this section.

(10) Subsections (3) to (8) of this section apply only to a DNA sample or genetic information that is coded, identified or identifiable.

(11) This section does not apply to any law, contract or other arrangement that determines a person's rights to compensation relating to substances or information derived from an individual's DNA sample.

SECTION 170. ORS 192.539 is amended to read:

192.539. (1) Regardless of the manner of receipt or the source of genetic information, including information received from an individual or a blood relative of the individual, a person may not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or the identity of a blood relative of the individual, or to disclose genetic information about the individual or a blood relative of the individual in a manner that permits identification of the individual, unless:

(a) Disclosure is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest, or a child fatality review by a county multidisciplinary child abuse team;

(b) Disclosure is required by specific court order entered pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Disclosure is authorized by statute for the purpose of establishing paternity;

(d) Disclosure is specifically authorized by the tested individual or the tested individual's representative by signing a consent form prescribed by rules of the [*Department of Human Services*] **Oregon Health Authority**;

(e) Disclosure is for the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent; or

(f) Disclosure is for the purpose of identifying bodies.

(2) The prohibitions of this section apply to any redisclosure by any person after another person has disclosed genetic information or the identity of an individual upon whom a genetic test has been performed, or has disclosed genetic information or the identity of a blood relative of the individual.

(3) A release or publication is not a disclosure if:

(a) It involves a good faith belief by the person who caused the release or publication that the person was not in violation of this section;

(b) It is not due to willful neglect;

(c) It is corrected in the manner described in ORS 192.541 (4);

(d) The correction with respect to genetic information is completed before the information is read or heard by a third party; and

(e) The correction with respect to DNA samples is completed before the sample is retained or genetically tested by a third party.

SECTION 171. ORS 192.547 is amended to read:

192.547. (1)(a) The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules for conducting research using DNA samples, genetic testing and genetic information. Rules establishing minimum research standards shall conform to the Federal Policy for the Protection of Human Subjects, 45 C.F.R. 46, that is current at the time the rules are adopted. The rules may be changed from time to time as may be necessary.

(b) The rules adopted by the [*Department of Human Services*] **Oregon Health Authority** shall address the operation and appointment of institutional review boards. The rules shall conform to the compositional and operational standards for such boards contained in the Federal Policy for the Protection of Human Subjects that is current at the time the rules are adopted. The rules must require that research conducted under paragraph (a) of this subsection be conducted with the approval of the institutional review board.

(c) Persons proposing to conduct anonymous research, coded research or genetic research that is otherwise thought to be exempt from review must obtain from an institutional review board prior to conducting such research a determination that the proposed research is exempt from review.

(2) A person proposing to conduct research under subsection (1) of this section, including anonymous research or coded research, must disclose to the institutional review board the proposed use of DNA samples, genetic testing or genetic information.

(3) The [Department of Human Services] **Oregon Health Authority** shall adopt rules requiring that all institutional review boards operating under subsection (1)(b) of this section register with the department. The Advisory Committee on Genetic Privacy and Research shall use the registry to educate institutional review boards about the purposes and requirements of the genetic privacy statutes and administrative rules relating to genetic research.

(4) The [Department of Human Services] **Oregon Health Authority** shall consult with the Advisory Committee on Genetic Privacy and Research before adopting the rules required under subsections (1) and (3) of this section, including rules identifying those parts of the Federal Policy for the Protection of Human Subjects that are applicable to this section.

(5) Genetic research in which the DNA sample or genetic information is coded shall satisfy the following requirements:

(a)(A) The subject has granted informed consent for the specific research project;

(B) The subject has consented to genetic research generally; or

(C) The DNA sample or genetic information is derived from a biological specimen or from clinical individually identifiable health information that was obtained or retained in compliance with ORS 192.537 (2).

(b) The research has been approved by an institutional review board after disclosure by the investigator to the board of risks associated with the coding.

(c) The code is:

(A) Not derived from individual identifiers;

(B) Kept securely and separately from the DNA samples and genetic information; and

(C) Not accessible to the investigator unless specifically approved by the institutional review board.

(d) Data is stored securely in password protected electronic files or by other means with access limited to necessary personnel.

(e) The data is limited to elements required for analysis and meets the criteria in 45 C.F.R. 164.514(e) for a limited data set.

(f) The investigator is a party to the data use agreement as provided by 45 C.F.R. 164.514(e) for limited data set recipients.

(6) Research conducted in accordance with this section is rebuttably presumed to comply with ORS 192.535 and 192.539.

(7)(a) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained, with blanket informed consent, before June 25, 2001, for genetic research.

(b) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained without specific informed consent and derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research if an institutional review board operating under subsection (1)(b) of this section:

(A) Waives or alters the consent requirements pursuant to the Federal Policy for the Protection of Human Subjects; and

(B) Waives authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164.

(c) Except as provided in subsection (5)(a) of this section or paragraph (b) of this subsection, a person must have specific informed consent from an individual to use a DNA sample or genetic information of the individual obtained on or after June 25, 2001, for genetic research.

(8) Except as otherwise allowed by rule of the [Department of Human Services] **Oregon Health Authority**, if DNA samples or genetic information obtained for either clinical or research purposes is used in research, a person may not recontact the individual or the individual's physician by using research information that is identifiable or coded. The [Department of Human Services] **Oregon Health Authority** shall adopt by rule criteria for recontacting an individual or an individual's

physician. In adopting the criteria, the department shall consider the recommendations of national organizations such as those created by executive order by the President of the United States and the recommendations of the Advisory Committee on Genetic Privacy and Research.

(9) The requirements for consent to, or notification of, obtaining a DNA sample or genetic information for genetic research are governed by the provisions of ORS 192.531 to 192.549 and the administrative rules that were in effect on the effective date of the institutional review board's most recent approval of the study.

SECTION 172. ORS 192.549 is amended to read:

192.549. (1) The Advisory Committee on Genetic Privacy and Research is established consisting of 15 members. The President of the Senate and the Speaker of the House of Representatives shall each appoint one member and one alternate. The Director of [*Human Services*] **the Oregon Health Authority** shall appoint one representative and one alternate from each of the following categories:

- (a) Academic institutions involved in genetic research;
- (b) Physicians licensed under ORS chapter 677;
- (c) Voluntary organizations involved in the development of public policy on issues related to genetic privacy;
- (d) Hospitals;
- [(e) The Department of Human Services;]*
- [(f) The Department of Consumer and Business Services;]*
- [(g) Health care service contractors involved in genetic and health services research;]*
- [(h) The biosciences industry;]*
- [(i) The pharmaceutical industry;]*
- [(j) Health care consumers;]*
- [(k) Organizations advocating for privacy of medical information;]*
- [(L) Public members of institutional review boards; and]*
- [(m) Organizations or individuals promoting public education about genetic research and genetic privacy and public involvement in policymaking related to genetic research and genetic privacy.]*

- (e) The Department of Consumer and Business Services;**
- (f) The Oregon Health Authority;**
- (g) Health care service contractors involved in genetic and health services research;**
- (h) The biosciences industry;**
- (i) The pharmaceutical industry;**
- (j) Health care consumers;**
- (k) Organizations advocating for privacy of medical information;**
- (L) Public members of institutional review boards; and**
- (m) Organizations or individuals promoting public education about genetic research and genetic privacy and public involvement in policymaking related to genetic research and genetic privacy.**

(2) Organizations and individuals representing the categories listed in subsection (1) of this section may recommend nominees for membership on the advisory committee to the President, the Speaker and the director.

(3) Members and alternate members of the advisory committee serve two-year terms and may be reappointed.

(4) Members and alternate members of the advisory committee serve at the pleasure of the appointing entity.

(5) The [*Department of Human Services*] **Oregon Health Authority** shall provide staff for the advisory committee.

(6) The advisory committee shall report biennially to the Legislative Assembly in the manner provided by ORS 192.245. The report shall include the activities and the results of any studies conducted by the advisory committee. The advisory committee may make any recommendations for legislative changes deemed necessary by the advisory committee.

(7) The advisory committee shall study the use and disclosure of genetic information and shall develop and refine a legal framework that defines the rights of individuals whose DNA samples and genetic information are collected, stored, analyzed and disclosed.

(8) The advisory committee shall create opportunities for public education on the scientific, legal and ethical development within the fields of genetic privacy and research. The advisory committee shall also elicit public input on these matters. The advisory committee shall make reasonable efforts to obtain public input that is representative of the diversity of opinion on this subject. The advisory committee's recommendations to the Legislative Assembly shall take into consideration public concerns and values related to these matters.

SECTION 173. ORS 192.630, as amended by section 21, chapter 100, Oregon Laws 2007, is amended to read:

192.630. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the [*Department of Human Services*] **Oregon Health Authority** or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.

SECTION 174. ORS 197.660 is amended to read:

197.660. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283, 215.284 and 443.422:

(1) "Residential facility" means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, [*licensed under ORS 443.400 to 443.460 or licensed under ORS 418.205 to 418.327 by the Department of Human Services*] that provides residential care

alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) "Residential home" means a residential treatment or training [*or adult foster home licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825,*] **home, as defined in ORS 443.400**, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement.

SECTION 175. ORS 198.792 is amended to read:

198.792. (1) Proceedings may be initiated by the county board or any other public agency in accordance with ORS 431.705 to 431.760:

- (a) To annex the affected territory to a district, as defined by ORS 431.705; or
- (b) To form a metropolitan service district as authorized by ORS chapter 268, or a county service district as authorized by ORS chapter 451, to include the affected territory.

(2) The findings of the Director of [*Human Services*] **the Oregon Health Authority** when filed with the county board in accordance with ORS 431.735 or 431.750 shall be considered a petition for the purposes of ORS 198.705 to 198.955. The county board of the principal county shall conduct proceedings in accordance with the findings and order of the director and with ORS 198.705 to 198.955.

(3) In proceedings described by subsection (1) of this section, the county board shall determine whether the affected territory shall be included in a new district or annexed to an existing district. The county board shall not inquire into the need for the proposed service facilities or adjust the boundaries of the affected territory. ORS 198.805 (2), and the provisions of ORS 198.810 and 198.815 providing for an election on the formation of or annexation to a district, do not apply to proceedings under this section.

SECTION 176. ORS 199.461 is amended to read:

199.461. (1) When the boundary commission receives a petition in a boundary change proceeding or an application for any proceeding allowed under ORS 199.464, it shall:

- (a) Cause a study to be made of the proposal.
- (b) Conduct one or more public hearings on the proposal.

(2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as either to include or exclude territory. If the commission determines that any land has been improperly omitted from the proposal and that the owner of the land has not appeared at the hearing, in person or by a representative designated in writing, the commission shall continue the hearing on the petition and shall order notice given to the nonappearing owner requiring appearance of the owner before the commission to show cause, if any, why the land should not be included in the proposal. For minor boundary change modifications, notice to nonappearing owners may be given by personal service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been continued. For major boundary change modifications, notice to nonappearing owners may be given by personal service, by letter sent by first-class mail or by a legal advertisement in a newspaper of general circulation in the area at least 15 days prior

to the date to which the hearing has been continued. The required notice may be waived by the nonappearing owner.

(3) After the study and hearings the boundary commission may alter the application for extraterritorial sewer or water line extensions to include or exclude line and connections thereto, and may alter the application for formation of a privately owned sewer or water system or allocation of territory to a community water supply system to include or exclude territory. If the commission determines that any land has been improperly omitted from a proposal to form a private water or sewer system or allocate territory to a community water system, or that any line or connections have been improperly omitted from a proposal to extend extraterritorially a water or sewer line, and that the owner of the property to be included or to which the line is being extended has not appeared at the hearing, in person or by a representative designated in writing, the commission shall continue the hearing on the proposal and shall order notice given to the nonappearing owner requiring appearance of the owner before the commission to show cause, if any, why the land or line or connection should not be included in the proposal. Notice to nonappearing owners may be given by personal service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been continued. The required notice may be waived by the nonappearing owner.

(4) On the basis of the study and on the basis of the facts presented at the hearing, the boundary commission shall approve the proposed boundary change or application under ORS 199.464 as presented or as modified by the commission or disapprove the proposed change, by an order stating the reasons for the decision of the commission. Jurisdiction for judicial review of such an order is conferred upon the Court of Appeals. Except as provided in ORS 183.315 (1), any person interested in a boundary change may petition for judicial review of the order under ORS 183.482.

(5) Immediately after the effective date of a final order entered under subsection (4) of this section and a proclamation declaring a minor boundary change approved if any is entered under ORS 199.505 (3), the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the Department of Revenue, the assessor and the county clerk of each county in which the affected territory, city or district is located, and the clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a copy of the final order to the person who actually filed the petition and to the affected city or district.

(6) Immediately after the effective date of a final order on an application under ORS 199.464, the commission shall file a copy of the order with the applicant, the *[Department of Human Services]* **Oregon Health Authority**, the Department of Environmental Quality and the county planning department.

SECTION 177. ORS 199.490 is amended to read:

199.490. (1) A proceeding for a minor boundary change other than a transfer of territory may be initiated:

- (a) By resolution of the governing body of the affected city or district;
- (b) By petition signed by 10 percent of the electors registered in the affected territory;
- (c) By petition signed by the owners of at least one-half the land area in the affected territory;
- (d) By resolution of a boundary commission having jurisdiction of the affected territory; or
- (e) When the minor boundary change is a withdrawal of a city from a district, by resolution of the governing body of the city, which shall be an affected city for the purposes of ORS 199.410 to 199.534.

(2)(a)(A) An annexation proceeding may also be initiated by a resolution adopted by the governing body of the affected city or district upon receiving consent to annex their land in writing from more than half of the owners of land in the territory proposed to be annexed, who also own more than half of the land in the territory proposed to be annexed and of real property therein representing more than half of the assessed value of all real property in the territory proposed to be annexed.

(B) A resolution adopted by the governing body of the affected city or district upon receiving written consent to annexation from a majority of the electors registered in the territory proposed

to be annexed and written consent to the annexation of their land from the owners of more than half the land in the territory proposed to be annexed.

(b) However, before soliciting statements of consent for the purpose of authorizing an annexation under a proceeding initiated as provided by this subsection, the governing body of the affected city or district shall file a notice of intent to annex with the boundary commission having jurisdiction of the affected territory. The notice of intent to annex shall name the affected city or district and generally describe the boundaries of the territory sought to be annexed, which territory must be contiguous to the city or district or separated from it only by a public right of way or a stream, bay, lake or other body of water. The notice of intent to annex shall have attached to it a county assessor's cadastral map showing the location of the affected territory that the city or district proposes to annex.

(c) For the purpose of this subsection, consent need not be obtained for any land in a public way included within or contiguous to the territory proposed to be annexed. However, land in such a public way shall, as determined by the commission, be considered annexed to the affected city or district if the minor boundary change is approved, regardless of the land's ownership, size or assessed valuation.

(d) For the purpose of this subsection, consent need not be obtained for any real property that is publicly owned, is the right of way for a public utility, telecommunications utility or railroad or is exempt from ad valorem taxation unless the owner of such property files a statement consenting to or opposing annexation with the legislative body of the annexing city or district on or before the date the city or district adopts the resolution required by paragraph (a) of this subsection.

(e) As used in this subsection, "owner" has the additional meaning given that term in ORS 222.120 (7).

(3) A transfer of territory proceeding may be initiated:

(a) By joint resolution of the governing bodies of the affected districts or cities;

(b) By petition signed by 10 percent of the electors registered in the affected territory;

(c) By petition signed by the owners of at least one-half the land area in the affected territory;

or

(d) By resolution of a boundary commission having jurisdiction of the affected territory.

(4) The petition or resolution shall:

(a) Name the affected city or district and state whether it is proposed to annex, withdraw or transfer territory;

(b) Describe the boundaries of the affected territory;

(c) If the proposal concerns a district, designate the applicable principal Act;

(d) Have attached a county assessor's cadastral map showing the location of the affected territory; and

(e) Be filed with the boundary commission having jurisdiction of the affected territory.

(5) When a city annexation is initiated:

(a) As provided by ORS 222.750 the petition proposing the annexation shall be filed with the boundary commission having jurisdiction of the annexation.

(b) As provided by ORS 222.840 to 222.915, the findings adopted by the Director of [*Human Services*] **the Oregon Health Authority** under ORS 222.880 shall be considered the initiatory action and a certified copy of the findings shall be filed with the boundary commission having jurisdiction of the annexation, at the same time a copy of the finding is filed with the affected city.

(6) Except when a boundary change is initiated by an affected city or district under subsection (1), (2), (3) or (5) of this section or by the [*Director of Human Services*] **director** as provided by subsection (5)(b) of this section, the boundary commission shall notify the affected city or district that a petition has been filed or that the commission has adopted a resolution. If the petition complies with the requirements of the applicable statutes, the commission shall proceed as provided by ORS 199.460 to 199.463 and 199.490 to 199.519.

(7) Unless the parties appearing at a hearing for a minor boundary change or application under ORS 199.464 agree to a postponement of the adoption of a final order, a final order approving or

disapproving a minor boundary change must be adopted within 90 days after the date the petition, resolution or application is filed with the commission. If a final order approving or disapproving a minor boundary change is not adopted within 90 days after the petition, resolution or application is filed or within the period of postponement, the petition, resolution or application shall be considered approved by the commission. A postponement shall not be for a period exceeding one year from the date the petition, resolution or application initiating the proposal is filed with the commission.

SECTION 178. ORS 199.495 is amended to read:

199.495. In a proceeding initiated as provided by ORS 199.490 (2) and (5):

(1) If the proposed annexation is approved by the commission, the final order shall be effective at the time specified in the final order except that the effective date for an annexation initiated as provided by ORS 199.490 (5) shall not be more than one year after the date the final order is adopted and for an annexation initiated as provided by ORS 199.490 (2) shall not be more than 10 years after the date the final order is adopted. If no effective date is specified in the final order, the order shall take effect on the date the order is adopted. The order shall not be subject to ORS 199.505.

(2) ORS 222.883 to 222.896, 222.900 (1) and (3) and 222.915 do not apply to proceedings initiated by the findings of the Director of [*Human Services*] **the Oregon Health Authority**.

SECTION 179. ORS 199.512 is amended to read:

199.512. (1) The findings of the Director of [*Human Services*] **the Oregon Health Authority** filed with a boundary commission in accordance with ORS 431.740 or 431.750 shall be considered a petition for the purposes of ORS 199.410 to 199.534. When the findings of the director are filed with a commission, it shall proceed in accordance with the findings and with ORS 199.410 to 199.534, but the commission shall not inquire into the need for the proposed facilities or adjust the boundaries of the affected territory.

(2) In proceedings described by subsection (1) of this section, the boundary commission shall determine whether the affected territory shall be included in a new city, new metropolitan service district or new county service district or annexed to an existing district. The final order of the commission shall conclude the proceedings for all purposes; and the formation or annexation approved and ordered by the commission shall take effect 45 days after the date the commission adopts the final order in the proceeding.

SECTION 180. ORS 222.120 is amended to read:

222.120. (1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the [*Department of Human Services*] **Oregon Health Authority**, prior to the public hearing held under subsection (1) of this section, has

issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

(7) For the purpose of this section, ORS 222.125 and 222.170, "owner" or "landowner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

SECTION 181. ORS 222.850 is amended to read:

222.850. As used in ORS 222.840 to 222.915, unless the context requires otherwise:

(1) "Affected territory" means an area within the urban growth boundary of a city and which is otherwise eligible for annexation to that city and in which there exists an actual or alleged danger to public health.

(2) "**Authority**" means the Oregon Health Authority.

[2] (3) "City council" means the legislative body of a city.

[3] (4) "Commission" means the Environmental Quality Commission.

[4] (5) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:

(a) Impure or inadequate domestic water.

(b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste.

(c) Inadequate improvements for drainage of surface water and other fluid substances.

[5] "*Department*" means the Department of Human Services.]

(6) "Director" means the Director of [*Human Services*] **the Oregon Health Authority.**

(7) "District" means any one of the following:

(a) A metropolitan service district formed under ORS chapter 268.

(b) A county service district formed under ORS chapter 451.

(c) A sanitary district formed under ORS 450.005 to 450.245.

(d) A sanitary authority, water authority or joint water and sanitary authority formed under ORS 450.600 to 450.989.

(e) A domestic water supply district formed under ORS chapter 264.

SECTION 182. ORS 222.860 is amended to read:

222.860. (1) The city council of any city shall adopt a resolution containing a proposal for annexation without vote or consent in the affected territory. The proposal may contain terms of annexation as provided in ORS 222.111 and shall:

(a) Describe the boundaries of the affected territory; and

(b) Describe the conditions alleged to be causing a danger to public health.

(2) The governing body of any district having jurisdiction over the affected territory may adopt a resolution containing a proposal for annexation to the city without vote or consent in the affected territory. The proposal shall:

(a) Describe the boundaries of the affected territory; and

(b) Describe the conditions alleged to be causing a danger to public health.

(3) The local board of health having jurisdiction shall verify the conditions alleged in the proposal to be causing a danger to public health, based upon its knowledge of those conditions.

(4) The council or governing body shall cause a certified copy of the resolution together with verification by the local board of health having jurisdiction, to be forwarded to the [Department of Human Services] **Oregon Health Authority** and request the [department] **authority** to ascertain whether conditions dangerous to public health exist in the affected territory.

SECTION 183. ORS 222.870 is amended to read:

222.870. (1) Upon receipt of the certified copy of the resolution, and verification by the local board of health having jurisdiction, the [Department of Human Services] **Oregon Health Authority** shall review and investigate conditions in the affected territory. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order for a hearing to be held within the affected territory, or at a place near the affected territory if there is no suitable place within that territory at which to hold the hearing, not sooner than 30 days from the date of the order.

(2) Upon issuance of an order for a hearing, the [department] **authority** shall immediately give notice of the resolution and order by publishing them in a newspaper of general circulation within the city and the affected territory once each week for two successive weeks and by posting copies of the order in four public places within the affected territory.

SECTION 184. ORS 222.875 is amended to read:

222.875. (1) The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory. It may be conducted by one or more members of the staff of the [Department of Human Services] **Oregon Health Authority** to whom authority to conduct such a hearing is delegated. It shall proceed in accordance with rules which may be established by the [department] **authority**. Any person who may be affected by the finding, including residents of the city, may be heard. Within 60 days following the hearing, the person conducting the hearing shall prepare and submit to the [department] **authority** written findings of fact and recommendations based thereon. The [department] **authority** shall publish a notice of the issuance of such findings and recommendations in the newspaper utilized for the notice of hearing under ORS 222.870, advising of the opportunity for presentation of a petition under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section any person who may be affected by the findings, including residents of the city, or the affected city, may petition the Director of [Human Services] **the Oregon Health Authority** according to rules of the [department] **authority** to present written or oral arguments on the proposal. If a petition is received the director may set a time and place for receipt of argument.

SECTION 185. ORS 222.880 is amended to read:

222.880. (1) Within 30 days following the final hearing of any arguments received by petition under the provisions of ORS 222.875 (2) the Director of [Human Services] **the Oregon Health Authority** shall review the arguments and the findings and recommendations of the person conducting the hearing as provided in ORS 222.875 (2). If the director finds no danger to public health exists because of conditions within the affected territory, the director shall issue an order terminating the proceedings under ORS 222.840 to 222.915 with reference to the affected territory.

(2) If the director finds that a danger to public health exists because of conditions within the affected territory, the director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, with the Environmental Quality Commission.

(3) If the director determines that a danger to public health exists because of conditions within only part of the affected territory, the director may, upon petition and hearing, reduce the boundaries of the affected territory to that part of the territory that presents a danger if the area to be excluded would not be surrounded by the affected territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the

danger to public health existing within the affected territory remaining to be annexed. The findings shall describe the boundaries of the affected territory as reduced by the director. The director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, the commission.

(4) In determining whether to exclude any area the director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the affected territory remaining to be annexed and whether the exclusion would result in an illogical boundary for the extension of services normally provided by an incorporated city.

(5) The city shall, when requested, aid in the determinations made under subsections (3) and (4) of this section and, if necessary, cause a study to be made.

(6) Notwithstanding ORS 222.111 (3), the director, in implementing an order under ORS 222.840 to 222.915, may allow the use of the tax differential authorized by ORS 222.111 (3) for a period not exceeding 15 years with the consent of the affected city.

SECTION 186. ORS 222.883 is amended to read:

222.883. At any time after the Director of [*Human Services*] **the Oregon Health Authority** under ORS 222.880 finds that conditions dangerous to public health exist, the [*Department of Human Services*] **Oregon Health Authority** may order further proceedings on the findings filed under ORS 222.880 halted in order to allow a city, district or persons affected by the findings to develop and propose an alternative plan to annexation for the removal or alleviation of the conditions dangerous to public health. Proceedings may be stayed under this section for not longer than 30 days.

SECTION 187. ORS 222.885 is amended to read:

222.885. (1) Within 60 days after the Director of [*Human Services*] **the Oregon Health Authority** under ORS 222.880 finds that conditions dangerous to public health exist, a petition, signed by not less than 51 percent of the electors registered in the affected territory, may be filed with the [*Department of Human Services*] **Oregon Health Authority**. Such petition shall suggest an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health. The petition shall state the intent of the residents to seek annexation to an existing district authorized by law to provide facilities within the affected territory necessary to remove or alleviate the dangerous conditions or to seek, with the approval of the city or district, extraterritorial extension of a city's or district's sewer or water lines. The petition shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities, and an estimate of the time required to construct such facilities and place them in operation.

(2) Within 30 days after the director under ORS 222.880 finds that conditions dangerous to public health exist, a resolution adopted by the city council or the governing body of any district having jurisdiction over the affected territory may be filed with the [*department*] **authority**. The resolution shall suggest an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health. The resolution shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities, and an estimate of the time required to construct such facilities and place them in operation.

(3) Upon receipt of such petition or resolution adopted by a district or city council, the [*department*] **authority** shall:

(a) Immediately forward copies of any petition or resolution to the city or district referred to in the petition or resolution, and, except where the condition causing the danger to public health is impure or inadequate domestic water, to the Environmental Quality Commission.

(b) Order further proceedings on the findings filed under ORS 222.880 stayed pending the review permitted under ORS 222.890 and this section.

SECTION 188. ORS 222.890 is amended to read:

222.890. (1) An alternative plan referred to in ORS 222.885 shall be reviewed by the [*Department of Human Services*] **Oregon Health Authority** in cases where danger to public health is caused by impure or inadequate domestic water and in all other cases by the Environmental Quality Commission. The plan shall be approved or rejected by the [*appropriate*] **authority or commission**. In re-

viewing the alternative plan contained in the petition, the authority **or commission** shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health. If it determines that annexation to the city provides the best and most expeditious method of removing or alleviating the dangerous conditions, the alternative plan shall be rejected and further proceedings on the finding filed under ORS 222.880 shall resume.

(2) If the [reviewing] authority **or commission** finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners or appropriate governing body shall have six months within which to present to [such] **the authority or commission** information showing:

(a) That the territory in which the conditions dangerous to public health exist has received approval for the extension of a city's or district's sewer or water lines within the territory or has annexed to a district authorized by law to provide facilities necessary to remove or alleviate the dangerous conditions, and that financing of the facilities for extension of such facilities to the territory has been assured.

(b) Detailed plans and specifications for the construction of such facilities.

(c) A time schedule for the construction of such facilities.

(d) That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the proposed annexation to the city.

(3) The authority **or commission** shall review the final plan presented to it by the petitioners, city or district and shall promptly certify whether the requirements of subsection (2) of this section have been met. If the requirements have been met, the [department] **authority** shall certify the alternative plan. Further annexation proceedings on the findings filed under ORS 222.880 shall be suspended and the city shall be so notified. If the requirements of subsection (2) of this section are not met by the petitioners, city or district or whenever the [reviewing] authority **or commission** determines that the requirements of the certified plan are not being satisfied, further proceedings on the findings filed under ORS 222.880 shall resume.

SECTION 189. ORS 222.897 is amended to read:

222.897. (1) Upon receipt of a certified copy of the findings of the [Department of Human Services] **Oregon Health Authority** under ORS 222.880, the city council shall cause a study to be made and preliminary plans and specifications developed for the sanitary, water or other facilities necessary to remove or alleviate the conditions causing a danger to public health. The council shall prepare a schedule setting out the steps necessary to put the plan into operation and the time required for each step in the implementation of the plan. A copy of the plans and specifications and the time schedule shall, in the case where the danger to public health is caused by impure or inadequate domestic water, be submitted to the [department] **authority** and in all other cases to the Environmental Quality Commission.

(2) If the city within 90 days, fails to complete the requirements in subsection (1) of this section, the [department] **authority** shall conduct the necessary studies and prepare plans and other documents required for the consideration of the proposal and the final determination of the proceedings. The expense of the study and preparation of the plans and other documents shall be paid by the city upon vouchers properly certified by the Director of [Human Services] **the Oregon Health Authority**.

SECTION 190. ORS 222.900 is amended to read:

222.900. (1) Subject to subsection (2) of this section, upon receipt of the certified copy of the finding as provided in ORS 222.880 (2) or (3) and certification of approval of plans under ORS 222.898, the city council shall adopt an ordinance which shall:

(a) Contain the legal description of the territory annexed;

(b) Contain the terms of the annexation, if any, made under ORS 222.111;

(c) Adopt the plans, specifications and time schedule as approved by the [Department of Human Services] **Oregon Health Authority** or Environmental Quality Commission; and

(d) Declare the territory annexed to the city in accordance with ORS 222.840 to 222.915.

(2) An ordinance shall not be enacted as provided in subsection (1) of this section until the expiration of the time for appeal under the provisions of ORS 222.896 and, in the event an appeal is filed, following the determination of that appeal.

(3) If the [*department*] **authority** makes its finding under ORS 222.880 (3), the city shall not annex a greater area than that described in the finding. The recorder, or other officer performing the duties of the recorder, shall transmit a transcript to the Secretary of State, including certified copies of the resolution required in ORS 222.860, the finding of the Director of [*Human Services*] **the Oregon Health Authority**, and the ordinance proclaiming annexation of the territory.

(4) If the city council adopts the ordinance of annexation as provided in subsection (1) of this section, it shall within one year thereafter prepare plans and specifications for the sanitary, water or other facilities proposed to be provided in the annexed area, in compliance with ORS 448.115 to 448.285 or 468B.055 and shall then proceed in accordance with the time schedule to construct or install these facilities. The commission shall use its powers of enforcement under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, and ORS chapters 468, 468A and 468B to insure that the facilities are constructed or installed in conformance with the approved plans and schedule. The manner of financing the cost of the facilities shall be determined by the city council.

SECTION 191. ORS 222.911 is amended to read:

222.911. No officer or employee of the [*Department of Human Services*] **Oregon Health Authority** who owns property or resides within affected territory that is subject to proceedings under the provisions of ORS 222.840 to 222.915 shall participate in an official capacity in any investigation, hearing or recommendation relating to such proceedings. If the Director of [*Human Services*] **the Oregon Health Authority** is such a person, the director shall so inform the Governor, who shall appoint another person to fulfill the duties of the director in any investigation, hearing or recommendation relating to such proceeding.

SECTION 192. ORS 244.050 is amended to read:

244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:

(a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and members of the Legislative Assembly.

(b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem judicial officer who does not otherwise serve as a judicial officer.

(c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

(d) The Deputy Attorney General.

(e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(f) The Chancellor and Vice Chancellors of the Oregon University System and the president and vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the State Board of Higher Education.

(g) The following state officers:

(A) Adjutant General.

(B) Director of Agriculture.

(C) Manager of State Accident Insurance Fund Corporation.

(D) Water Resources Director.

(E) Director of Department of Environmental Quality.

(F) Director of Oregon Department of Administrative Services.

(G) State Fish and Wildlife Director.

(H) State Forester.

(I) State Geologist.

- (J) Director of Human Services.
- (K) Director of the Department of Consumer and Business Services.
- (L) Director of the Department of State Lands.
- (M) State Librarian.
- (N) Administrator of Oregon Liquor Control Commission.
- (O) Superintendent of State Police.
- (P) Director of the Public Employees Retirement System.
- (Q) Director of Department of Revenue.
- (R) Director of Transportation.
- (S) Public Utility Commissioner.
- (T) Director of Veterans' Affairs.
- (U) Executive Director of Oregon Government Ethics Commission.
- (V) Director of the State Department of Energy.
- (W) Director and each assistant director of the Oregon State Lottery.
- (X) Director of the Oregon Health Authority.**
- (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
- (i) Every elected city or county official.
- (j) Every member of a city or county planning, zoning or development commission.
- (k) The chief executive officer of a city or county who performs the duties of manager or principal administrator of the city or county.
- (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- (m) Every member of a governing body of a metropolitan service district and the executive officer thereof.
- (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- (o) The chief administrative officer and the financial officer of each common and union high school district, education service district and community college district.
- (p) Every member of the following state boards and commissions:
 - (A) Board of Geologic and Mineral Industries.
 - (B) Oregon Economic and Community Development Commission.
 - (C) State Board of Education.
 - (D) Environmental Quality Commission.
 - (E) Fish and Wildlife Commission of the State of Oregon.
 - (F) State Board of Forestry.
 - (G) Oregon Government Ethics Commission.
 - (H) Oregon Health Policy [*Commission*] **Board**.
 - (I) State Board of Higher Education.
 - (J) Oregon Investment Council.
 - (K) Land Conservation and Development Commission.
 - (L) Oregon Liquor Control Commission.
 - (M) Oregon Short Term Fund Board.
 - (N) State Marine Board.
 - (O) Mass transit district boards.
 - (P) Energy Facility Siting Council.
 - (Q) Board of Commissioners of the Port of Portland.
 - (R) Employment Relations Board.
 - (S) Public Employees Retirement Board.
 - (T) Oregon Racing Commission.
 - (U) Oregon Transportation Commission.
 - (V) Wage and Hour Commission.
 - (W) Water Resources Commission.
 - (X) Workers' Compensation Board.
 - (Y) Oregon Facilities Authority.

- (Z) Oregon State Lottery Commission.
- (AA) Pacific Northwest Electric Power and Conservation Planning Council.
- (BB) Columbia River Gorge Commission.
- (CC) Oregon Health and Science University Board of Directors.
- (q) The following officers of the State Treasurer:
 - (A) Chief Deputy State Treasurer.
 - (B) Chief of staff for the office of the State Treasurer.
 - (C) Director of the Investment Division.
- (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953.
 - (s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
- (2) By April 15 next after the date an appointment takes effect, every appointed public official on a board or commission listed in subsection (1) of this section shall file with the Oregon Government Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
- (3) By April 15 next after the filing deadline for the primary election, each candidate for public office described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
- (4) Within 30 days after the filing deadline for the general election, each candidate for public office described in subsection (1) of this section who was not a candidate in the preceding primary election, or who was nominated for public office described in subsection (1) of this section at the preceding primary election by write-in votes, shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
- (5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or appointed public officials as of April 15 and to persons who are candidates for public office on April 15. Subsections (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.
- (6) If a statement required to be filed under this section has not been received by the commission within five days after the date the statement is due, the commission shall notify the public official or candidate and give the public official or candidate not less than 15 days to comply with the requirements of this section. If the public official or candidate fails to comply by the date set by the commission, the commission may impose a civil penalty as provided in ORS 244.350.

SECTION 193. ORS 247.570 is amended to read:

247.570. (1) Not later than five business days after receiving a certificate of death under ORS 432.307, a county registrar designated under ORS 432.035 shall furnish to the county clerk of that county the name, age, date of birth and residence address of the person for whom the registrar has received the certificate of death. If the person was registered to vote in the county, the county clerk immediately shall cancel the registration of the person.

(2) Not later than five business days after receiving information from the county registrar under subsection (1) of this section, the county clerk shall furnish the information to the Secretary of State. The Secretary of State shall furnish a copy of the appropriate names received under this subsection to each county clerk. Each county clerk immediately shall cancel the registrations of those persons.

(3) The [*Department of Human Services*] **Oregon Health Authority**, during the last week of each month, shall furnish to the Secretary of State a list of the name, age, date of birth, county of residence and residence address of each resident of this state who has died during the preceding month and for whom a certificate of death was not filed with a county registrar. The Secretary of State shall furnish a copy of the appropriate names to each county clerk. Each county clerk immediately shall cancel registrations of those persons.

SECTION 194. ORS 276.180 is amended to read:

276.180. When vacated and no longer required for institution uses, all or any portion of the buildings, grounds and facilities presently operated and controlled by the Department of Human

Services, **the** Department of Corrections, **the Oregon Health Authority** or the State Board of Education, are transferred to the Oregon Department of Administrative Services when so ordered by the Oregon Department of Administrative Services. Title shall vest automatically in the Oregon Department of Administrative Services in the name of the State of Oregon and the department shall operate and maintain all facilities described in this section.

SECTION 195. ORS 276.610 is amended to read:

276.610. There is established a fund in the State Treasury to be known as the State Building Fund which shall be used for the construction, alteration and repair of buildings required for use of institutions and activities under the jurisdiction of the Department of Corrections, **the** Department of Human Services, **the Oregon Health Authority** or the State Board of Education and the State Board of Higher Education and for the furnishing and equipping of buildings so constructed, altered or repaired.

SECTION 196. ORS 276.612 is amended to read:

276.612. The Department of Corrections, **the** Department of Human Services, **the Oregon Health Authority** and the State Board of Education each shall determine the buildings to be constructed, altered, repaired, furnished and equipped for the use of institutions and activities under their respective jurisdictions. The State Board of Higher Education shall determine the buildings to be constructed, altered, repaired, furnished and equipped for the use of institutions or activities under its jurisdiction.

SECTION 197. ORS 278.315 is amended to read:

278.315. (1) The [*Department of Human Services*] **Oregon Health Authority** may provide tort liability coverage through the Oregon Department of Administrative Services to any county or private community care provider that has contracted with the [*Department of Human Services*] **authority** to provide supervision, care, treatment or training of persons under the jurisdiction of the Psychiatric Security Review Board. Counties or private community care providers, and the officers and employees of those counties and providers acting within the scope of their employment, may be covered to the extent that any tort claim arises out of the provision of supervision, care, treatment or training of persons pursuant to the terms of the contract. Tort liability coverage under this section must be in writing, and may be part of the contract between the [*Department of Human Services*] **authority** and the county or private community care provider. The coverage provided under this section shall be self-insurance by the State of Oregon to the limits contained in ORS 30.260 to 30.300.

(2) Counties or private community care providers that have contracted with the [*Department of Human Services*] **authority** to provide supervision, care, treatment or training of persons under the jurisdiction of the Psychiatric Security Review Board, and the officers and employees of those counties and providers, are not agents of the [*department*] **authority** for the purposes of ORS 30.260 to 30.300.

SECTION 198. ORS 279A.050 is amended to read:

279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all procurement authority in accordance with the provisions of the Public Contracting Code.

(b) When a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency is not required to exercise that authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting authority.

(2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority to carry out the provisions of the Public Contracting Code.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services relating to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts related to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing[.] **for the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;**

(b) **The Oregon Health Authority to procure or supervise the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing for persons with chronic mental illness, subject to applicable provisions of ORS 426.504;**

[(A) For persons with chronic mental illness, subject to applicable provisions of ORS 426.504; and]

[(B) For the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;]

[(b)] (c) The State Department of Fish and Wildlife to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the State Department of Fish and Wildlife;

[(c)] (d) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services relating to state parks;

[(d)] (e) The Oregon Department of Aviation to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Department of Aviation;

[(e)] (f) The Economic and Community Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

[(f)] (g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services as provided in ORS 279A.025 (2)(o);

[(g)] (h) The Department of Corrections to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Department of Corrections;

[(h)] (i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods for its institutions;

[(i)] (j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;

[(j)] (k) The Oregon Military Department to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Military Department;

[(k)] (L) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to procure or supervise the procurement of goods, services, personal services and information technology relating to student assessment; and

[(L)] (m) Any state agency to conduct a procurement when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.

(7) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority to procure or supervise the procurement of all state agency information technology contracts and all price agreements on behalf of the state agencies identified in subsection (6)(a) to [(j)] (k) of this section under which more than one state agency may order goods, services or personal services unless the director delegates this authority. This subsection does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidental to the performance of personal services contracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A state agency identified in subsection (3) or (6)(a) to [(j)] (k) of this section may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director if the director has established a price agreement for the goods, services or personal services.

SECTION 199. ORS 285A.213 is amended to read:

285A.213. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Safe Drinking Water Revolving Loan Fund. All moneys in the Safe Drinking Water Revolving Loan Fund are continuously appropriated to the Economic and Community Development Department.

(2) The Economic and Community Development Department shall administer the Safe Drinking Water Revolving Loan Fund in accordance with a memorandum of understanding between the department and the [*Department of Human Services*] **Oregon Health Authority**.

(3) The Safe Drinking Water Revolving Loan Fund shall consist of:

(a) Moneys transferred to the fund by the [*Department of Human Services*] **authority** for purposes authorized by the memorandum of understanding between the [*Department of Human Services and the Economic and Community Development Department*] **authority and the department**.

(b) Moneys transferred to the fund by the federal government, other state agencies or local governments.

(c) Moneys transferred to the fund by the Legislative Assembly or the Oregon Economic and Community Development Commission.

(d) Proceeds from the sale of revenue bonds.

(e) Repayment of financial assistance provided with moneys from the fund.

(f) Interest and other earnings on moneys in the fund.

(4) Moneys in the Safe Drinking Water Revolving Loan Fund shall be used to provide financial or other assistance to publicly owned and privately owned water systems under the Safe Drinking Water Act Amendments of 1996, P.L. 104-182, and rules of the [*Economic and Community Development Department*]. *As used in this subsection, "assistance" includes direct purchase by the Economic and Community Development Department of goods or services related to a water system project to the extent permitted by the memorandum of understanding between the Economic and Community Development Department and the Department of Human Services, the Safe Drinking Water Act Amendments of 1996, and as authorized by rules of the Economic and Community Development Department*] **de-**

partment. As used in this subsection, “assistance” includes direct purchase by the department of goods or services related to a water system project to the extent permitted by the memorandum of understanding between the department and the authority, the Safe Drinking Water Act Amendments of 1996, and as authorized by rules of the department.

(5) The owner of a water system may borrow from the Safe Drinking Water Revolving Loan Fund by entering into a loan agreement with the [*Economic and Community Development Department*] **department**. The owner of a municipally owned water system may enter into a loan agreement with the department notwithstanding any restriction on indebtedness in the charter or bylaws of the municipality or any other provision of law. Moneys owed to the department by the borrower under a loan agreement may be paid from:

(a) Revenue from any water system project of the borrower, including special assessment revenue;

(b) Amounts withheld under subsection (6) of this section;

(c) The general fund of the borrower;

(d) Any combination of sources listed in paragraphs (a) to (c) of this subsection; or

(e) Any other source.

(6) If a borrower fails to comply with a loan agreement entered into under subsection (5) of this section, the [*Economic and Community Development Department*] **department** may seek appropriate legal remedies to secure any repayment due the Safe Drinking Water Revolving Loan Fund. If a borrower defaults on repayment due the fund, the State of Oregon may withhold any amounts otherwise due to the borrower. Any amounts withheld under this subsection shall be credited toward repayment of the borrower’s indebtedness to the fund.

SECTION 200. ORS 285B.563 is amended to read:

285B.563. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Water Fund. All moneys in the Water Fund are continuously appropriated to the Economic and Community Development Department for the purposes described in ORS 285B.560 to 285B.599, including the direct project management costs.

(2)(a) Moneys in the Water Fund may be obligated to water projects.

(b) Moneys shall be used primarily to make loans to municipalities. The department may make a loan only if:

(A) The municipality applying for the loan certifies to the department that adequate funds will be available to repay the loan; and

(B) The department determines that the amount of the loan applied for is based on a reasonable and prudent expectation of the municipality’s ability to repay the loan.

(c) The department may award a grant only if a loan is not feasible due to:

(A) Financial hardship to the municipality, as determined by the department, based on consideration of anticipated water service charges or anticipated waste water service charges, the per capita income of the municipality and any other factors as the department by rule may establish; and

(B) Special circumstances of the water project.

(d) The department may determine the amount of grant or loan funding on a case-by-case basis.

(3) The moneys in the fund may also be used to assist the department in selling revenue bonds on behalf of municipalities in order to carry out the purposes of ORS 285B.560 to 285B.599.

(4) Moneys in the Water Fund may be invested as provided by ORS 293.701 to 293.820. The earnings from the investments and other program income shall be credited to the Water Fund.

(5) The Water Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly.

(b) Moneys transferred to the fund by the Economic and Community Development Department from the Special Public Works Fund created by ORS 285B.455.

(c) Moneys transferred to the Water Fund by the Water Resources Commission from the Water Development Fund created by Article XI-I(1) of the Oregon Constitution.

(d) Moneys from any federal, state or other grants.

- (e) Proceeds of revenue bonds issued under ORS 285B.575.
- (f) Earnings on the Water Fund.

(6) The department shall administer the fund.

(7) The department shall adopt rules and policies for the administration of the fund. The department shall coordinate its rulemaking regarding safe drinking water projects with the Water Resources Department and the [*Department of Human Services*] **Oregon Health Authority**. The rules adopted under this subsection for safe drinking water projects shall:

(a) Require the installation of meters on all new active service connections from any distribution lines funded with moneys from the fund or from the proceeds of revenue bonds issued under ORS 285B.572 to 285B.578.

(b) Require a plan, to be adopted by a municipality receiving financial assistance from the fund, for installation of meters on all service connections throughout the drinking water system not later than two years after the completion of a safe drinking water project.

(8)(a) The Economic and Community Development Department shall manage the Water Fund and any expenditures from accounts in the fund and transfers between accounts so that the fund provides a continuing source of financing consistent with ORS 285B.413.

(b) If necessary to ensure repayment of bonds issued under ORS 285B.560 to 285B.599, the department may reduce the value of the fund when the department:

(A) Finds that without a reduction in fund value, bonds secured by the fund are likely to be in default; and

(B) Imposes a moratorium on grants until the requirements of paragraph (a) of this subsection are satisfied.

(9)(a) The department may charge administrative costs to the fund, but not to moneys segregated in the account created by subsection (11) of this section, to pay for administrative costs incurred by the department.

(b) To the extent permitted by federal law, administrative costs of the department may be paid from bond proceeds.

(10) The department may establish other accounts within the Water Fund for the payment of water projects costs, reserves, debt service payments, credit enhancements, costs of issuing revenue bonds, administrative costs and operating expenses or any other purpose necessary to carry out ORS 285B.560 to 285B.599.

(11) There is created within the Water Fund a separate and distinct account for the proceeds from the sale of water development general obligation bonds issued for safe drinking water projects and credited to the special account under this section. Any investment earnings thereon shall be segregated in and continuously appropriated to a special, separately accounted for subaccount of this account. Moneys credited to this account shall be maintained separate and distinct from moneys credited to subaccounts created under subsection (10) of this section. Notwithstanding ORS 285B.566 or subsection (4) of this section, all repayments of moneys loaned from the account created by this subsection, including interest on the moneys, shall be credited to the Water Development Administration and Bond Sinking Fund created by ORS 541.830.

(12) As used in this section, "administrative costs" include the department's direct and indirect costs for investigating and processing an application, developing a contract, monitoring the use of funds by a municipality, investigating and resolving a budget discrepancy, closing a project and providing financial and other assistance to a municipality.

NOTE: Section 201 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 202. ORS 291.371 is amended to read:

291.371. (1) As used in this section, "legislative review agency" means the Joint Committee on Ways and Means during the period when the Legislative Assembly is in session and the Emergency Board during the interim period between sessions.

(2) Prior to making any changes in a salary plan, the Oregon Department of Administrative Services shall submit the proposed changes to the legislative review agency.

(3)(a) The Oregon Department of Administrative Services may approve the reallocation of positions or the establishment of new positions not specifically provided for in the budget of the affected agency if it finds that the proposed change:

(A) Can be financed by the agency within the limits of its biennial budget and legislatively approved program;

(B) Will not produce future budgetary increases; and

(C) Conforms to legislatively approved salary policies.

(b) Proposed changes not meeting the requirements of paragraph (a) of this subsection shall be presented to the legislative review agency.

(4) Agencies within the Department of Human Services, **the Oregon Health Authority** and the Department of Corrections shall report on a biennial basis to the legislative review agency. Each report shall include the number of vacant budgeted positions, including all job categories and classifications, within the agency. The legislative review agency shall order the reporting agency to show cause why the budgeted positions have not been filled and shall assess fully the impact the vacancies have on:

(a) The agency's delivery of services, accounting for any seasonal fluctuation in the need for those services;

(b) The agency's budget due to increased use of overtime;

(c) The agency's use of temporary employees; and

(d) Employee workload.

(5) It is declared to be the policy of this state that the total personal services, budget and full-time equivalent positions approved for any state agency shall be the maximum amount necessary to meet the requirements of the agency for the biennium. Notwithstanding ORS 291.232 to 291.260, the Governor and the Oregon Department of Administrative Services may transfer vacant position authority among and within state agencies to achieve maximum utilization of authorized positions within agencies.

SECTION 203. ORS 314.840 is amended to read:

314.840. (1) The Department of Revenue may:

(a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, representative or designee, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return, or with any other information the department considers necessary.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report, return or claim required in the administration of ORS 310.630 to 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor:

(A) With respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employee of the Oregon Department of Administrative Services duly authorized or employed to prepare revenue estimates, or a person contracting with the Oregon Department of Administrative Services to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for submission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes of this subparagraph only if:

(i) The request for information is made in writing, specifies the purposes for which the request is made and is signed by an authorized representative of the Oregon Department of Administrative Services. The form for request for information shall be prescribed by the Oregon Department of Administrative Services and approved by the Director of the Department of Revenue.

(ii) The officer, employee or person receiving the information does not remove from the premises of the Department of Revenue any materials that would reveal the identity of a personal or corporate taxpayer.

(b) The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.

(c) For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

(A) A state;

(B) A city, county or other political subdivision of a state;

(C) The District of Columbia; or

(D) An association established exclusively to provide services to federal, state or local taxing authorities.

(d) The Multistate Tax Commission or its authorized representatives, for tax administration and compliance purposes only. The Multistate Tax Commission may make the information available to the Commissioner of Internal Revenue or the proper officer or authorized representative of any governmental entity described in and meeting the qualifications of paragraph (c) of this subsection.

(e) The Attorney General, assistants and employees in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

(f) Employees of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department's administration of the tax laws.

(g) Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the department deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the department and such legal entities, in the department's administration of the tax laws.

(h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

(i) The Department of Consumer and Business Services, to the extent the department requires such information to determine whether it is appropriate to adjust those workers' compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

(j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy, pursuant to ORS 673.415.

(k) The Director of the Department of Consumer and Business Services to determine that a person complies with ORS chapter 656 and the Director of the Employment Department to determine that a person complies with ORS chapter 657, the following employer information:

- (A) Identification numbers.
- (B) Names and addresses.
- (C) Inception date as employer.
- (D) Nature of business.
- (E) Entity changes.
- (F) Date of last payroll.

(L) The Director of Human Services to determine that a person has the ability to pay for care that includes services provided by the [*state institutions as described in ORS 179.321*] **Eastern Oregon Training Center** or the Department of Human Services [*or*] to collect any unpaid cost of care as provided by ORS chapter 179.

(m) The Director of the Oregon Health Authority to determine that a person has the ability to pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by ORS chapter 179.

[(*m*)] (n) Employees of the Employment Department to the extent the Department of Revenue deems disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657.

[(*n*)] (o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

[(*o*)] (p) Employees of the Department of State Lands for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the refund amount.

[(*p*)] (q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement agencies to assist in the investigation or prosecution of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

[(q)] (r) The United States Postal Inspection Service or a federal law enforcement agency, including but not limited to the United States Department of Justice, to assist in the investigation of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

[(r)] (s) The United States Financial Management Service, for purposes of facilitating the reciprocal offsets described in ORS 305.612.

[(s)] (t) A municipal corporation of this state for purposes of assisting the municipal corporation in the administration of a tax of the municipal corporation that is imposed on or measured by income, wages or net earnings from self-employment. Any disclosure under this paragraph may be made only pursuant to a written agreement between the Department of Revenue and the municipal corporation that ensures the confidentiality of the information disclosed.

(3)(a) Each officer or employee of the department and each person described or referred to in subsection (2)(a), (e) to (k) or *[(m) to (p)] (n) to (q)* of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835.

(b) The disclosure authorized in subsection *[(2)(q)] (2)(r)* of this section shall be made only after a written agreement has been entered into between the Department of Revenue and the person described in subsection *[(2)(q)] (2)(r)* of this section to whom disclosure or access to the tax information is given, providing that:

(A) Any information described in ORS 314.835 that is received by the person pursuant to subsection *[(2)(q)] (2)(r)* of this section is confidential information that may not be disclosed, except to the extent necessary to investigate or prosecute the criminal activities described in subsection *[(2)(q)] (2)(r)* of this section;

(B) The information shall be protected as confidential under applicable federal and state laws; and

(C) The United States Postal Inspection Service or the federal law enforcement agency shall give notice to the Department of Revenue of any request received under the federal Freedom of Information Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

(4) The Department of Revenue may recover the costs of furnishing the information described in subsection *[(2)(k), (L) and (n) to (p)] (2)(k) to (m) and (o) to (q)* of this section from the respective agencies.

SECTION 204. ORS 315.604 is amended to read:

315.604. (1) As used in this section:

(a) "Bone marrow donor expense" means the sum of the amounts paid or incurred during the tax year by an employer for the following:

(A) Development of an employee bone marrow donation program.

(B) Employee education related to bone marrow donation, including but not limited to the need for donors and an explanation of the procedures used to determine tissue type and donate bone marrow.

(C) Payments to a health care provider for determining the tissue type of an employee who agrees to register or registers as a bone marrow donor.

(D) Wages paid to an employee for time reasonably related to tissue typing and bone marrow donation.

(E) Transportation of an employee to the site of a donation or any other service which is determined by the [*Department of Human Services*] **Oregon Health Authority** by rule as essential for a successful bone marrow donation.

(b) "Employee" means an individual who:

(A) Is regularly employed by the taxpayer for more than 20 hours per week;

(B) Who is not a temporary or seasonal employee; and

(C) Whose wages are subject to withholding under ORS 316.162 to 316.221.

(c) "Wages" has the meaning given the term for purposes of ORS 316.162 to 316.221.

(2) A business tax credit against the taxes otherwise due under ORS chapter 316 for the tax year is allowed to a resident employer, or if the employer is a corporation, to the employer against the taxes otherwise due under ORS chapter 317. The amount of the credit is equal to 25 percent of the bone marrow donor expense paid or incurred during the tax year by an employer to provide a program for employees who are potential bone marrow donors or who actually become bone marrow donors.

(3)(a) Except as provided under paragraph (b) of this subsection, the allowance of a credit under this section shall not affect the computation of taxable income for purposes of ORS chapter 316 or 317.

(b) If in determining the amount of the credit for any tax year an amount allowed as a deduction under section 170 of the Internal Revenue Code is included in bone marrow donation expense, the amount allowed as a deduction shall be added to federal taxable income.

(4) The credit allowed under this section shall be allowed to a nonresident employer in the same manner as the credit is allowed to a resident employer.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

SECTION 205. ORS 315.613 is amended to read:

315.613. (1) A resident or nonresident individual certified as eligible under ORS 442.563, licensed under ORS chapter 677, who is engaged in the practice of medicine, and who has a rural practice that amounts to 60 percent of the individual's practice, shall be allowed an annual credit against taxes otherwise due under this chapter in the sum of \$5,000 during the time in which the individual retains such practice and membership if the individual is actively practicing in and is a member of the medical staff of one of the following hospitals:

(a) A type A hospital designated as such by the Office of Rural Health;

(b) A type B hospital designated as such by the Office of Rural Health if the hospital is:

(A) Not within the boundaries of a metropolitan statistical area;

(B) Located 30 or more highway miles from the closest hospital within the major population center in a metropolitan statistical area; or

(C) Located in a county with a population of less than 75,000;

(c) A type C rural hospital, if the Office of Rural Health makes the findings required by ORS 315.619; or

(d) A rural critical access hospital.

(2) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117. If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(3) For purposes of this section, an "individual's practice" shall be determined on the basis of actual time spent in practice each week in hours or days, whichever is considered by the Office of Rural Health to be more appropriate. In the case of a shareholder of a corporation or a member of a partnership, only the time of the individual shareholder or partner shall be considered and the full amount of the credit shall be allowed to each shareholder or partner who qualifies in an individual capacity.

(4) As used in this section:

(a) "Type A hospital," "type B hospital" and "type C hospital" have the meaning for those terms provided in ORS 442.470.

(b) "Rural critical access hospital" means a facility that meets the criteria set forth in 42 U.S.C. 1395i-4 (c)(2)(B) and that has been designated a critical access hospital by the Office of Rural Health and the [Department of Human Services] **Oregon Health Authority**.

SECTION 206. ORS 320.308 is amended to read:

320.308. The following are exempt from the state transient lodging tax:

(1) A dwelling unit in a hospital, health care facility, long term care facility or any other residential facility that is licensed, registered or certified by the Department of Human Services **or the Oregon Health Authority**;

(2) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;

(3) A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;

(4) A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;

(5) A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or

(6) A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

(a) All dwelling units occupied are within the same facility; and

(b) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

SECTION 206a. ORS 323.455 is amended to read:

323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly individuals and individuals with disabilities as provided in ORS 391.800 to 391.830.

(2) The moneys so appropriated to cities and counties shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund

established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for **the** medical assistance **program** under [*the Oregon Health Plan*] **ORS chapter 414**, or to funding the maintenance of the benefits available under the [*Oregon Health Plan*] **program**, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

SECTION 206b. ORS 323.625 is amended to read:

323.625. All moneys received by the Department of Revenue under ORS 323.500 to 323.645 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the General Fund. Of the amount credited to the General Fund under this section 41.54 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for **the** medical assistance **program** under [*the Oregon Health Plan*] **ORS chapter 414**, or to funding the maintenance of the benefits available under the [*Oregon Health Plan*] **program**, or both, and 4.62 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

SECTION 207. ORS 332.111 is amended to read:

332.111. A district school board in a school district may enter into agreements to provide auxiliary services and facilities to students, including but not limited to forms of residential care and medical and dental services. Any facility used for residential purposes under this section must meet the applicable standards of the [*Department of Human Services*] **Oregon Health Authority** and the State Fire Marshal.

SECTION 208. ORS 336.222 is amended to read:

336.222. In accordance with rules adopted by the State Board of Education in consultation with the [*Department of Human Services*] **Oregon Health Authority**, each district school board shall adopt a comprehensive alcohol and drug abuse policy and implementation plan, including but not limited to:

- (1) Alcohol and drug abuse prevention curriculum and public information programs addressing students, parents, teachers, administrators and school board members;
- (2) The nature and extent of the district's expectation of intervention with students who appear to have drug or alcohol abuse problems;
- (3) The extent of the district's alcohol and other drug prevention and intervention programs; and
- (4) The district's strategy to gain access to federal funds available for drug abuse prevention programs.

SECTION 209. ORS 336.227 is amended to read:

336.227. To assist school districts to formulate the programs described in ORS 336.222 (1), the [*Department of Human Services*] **Oregon Health Authority** shall:

- (1) Devise a public information program directed toward students, parents, teachers, administrators and school board members at the school district level; and
- (2) Contact advocacy associations of the target groups described in subsection (1) of this section to facilitate outreach programs and disseminate alcohol and drug abuse prevention information.

SECTION 210. ORS 336.235 is amended to read:

336.235. In order to carry out the duties described in ORS 336.222 and 336.227, the State Board of Education, in consultation with the [*Department of Human Services*] **Oregon Health Authority**, shall adopt by rule, as a minimum, descriptions of the content of what shall be included in the policy and plan described in ORS 336.222 and 336.227.

SECTION 211. ORS 336.245 is amended to read:

336.245. The Department of Education, the Oregon University System and the [*Department of Human Services*] **Oregon Health Authority** shall report to regular sessions of the Legislative Assembly and to the Governor on the progress and effectiveness of the policies and plans described in

ORS 336.222, 336.227 and 352.008 by submitting a copy of the report to the offices of the President of the Senate and the Speaker of the House of Representatives and to the Governor.

SECTION 212. ORS 339.333 is amended to read:

339.333. (1) The Center for School Safety shall be governed by a board of directors. The board of directors shall consist of:

- (a) The Superintendent of Public Instruction or a designee of the superintendent;
- (b) The Director of the Oregon Youth Authority or a designee of the director;
- (c) The Attorney General or a designee of the Attorney General;
- (d) The Superintendent of State Police or a designee of the superintendent;
- (e) The Director of Human Services or a designee of the director;
- (f) The Director of the Oregon Health Authority or a designee of the director;**

[(f)] **(g)** Nine members appointed by the Governor, as follows:

- (A) One member representing the Oregon School Boards Association;
- (B) One member representing the Confederation of Oregon School Administrators;
- (C) One member representing the Oregon Education Association;
- (D) One member representing the Oregon School Employees Association;
- (E) One member representing the Oregon State Sheriffs' Association;
- (F) One member representing the Oregon Association Chiefs of Police;
- (G) One member representing the Oregon District Attorneys Association;
- (H) One member representing the National Resource Center for Safe Schools on the Northwest

Regional Educational Laboratory; and

- (I) One member representing the Oregon School Safety Officers Association; and

[(g)] **(h)** Other members that the board may appoint.

(2) When making appointments to the board of directors, the Governor shall solicit recommendations from professional organizations that represent school employees, school district boards, school administrators and other education providers.

(3) The term of office of each board member appointed by the Governor is two years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a board member, the Governor shall appoint a successor. A board member is eligible for reappointment but shall not serve for more than two consecutive terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board of directors is entitled to compensation and expenses as provided in ORS 292.495.

(5) The board of directors shall meet a minimum of four times per year.

(6) The board of directors shall annually elect a chairperson and vice chairperson from the membership. The board of directors may form committees as needed.

SECTION 213. ORS 339.505 is amended to read:

339.505. (1) For purposes of the student accounting system required by ORS 339.515, the following definitions shall be used:

(a) "Graduate" means an individual who has:

(A) Not reached 21 years of age or whose 21st birthday occurs during the current school year;

(B) Met all state requirements and local requirements for attendance, competence and units of credit for high school; and

(C) Received one of the following:

(i) A high school diploma issued by a school district.

(ii) An adult high school diploma issued by an authorized community college.

(iii) A modified high school diploma.

(b) "School dropout" means an individual who:

(A) Has enrolled for the current school year, or was enrolled in the previous school year and did not attend during the current school year;

(B) Is not a high school graduate;

(C) Has not received a General Educational Development (GED) certificate; and

- (D) Has withdrawn from school.
- (c) "School dropout" does not include a student described by at least one of the following:
 - (A) A student who has transferred to another educational system or institution that leads to graduation and the school district has received a written request for the transfer of the student's records or transcripts.
 - (B) A student who is deceased.
 - (C) A student who is participating in home instruction paid for by the district.
 - (D) A student who is being taught by a private teacher, parent or legal guardian pursuant to ORS 339.030 (1)(d) or (e).
 - (E) A student who is participating in a Department of Education approved public or private education program, an alternative education program as defined in ORS 336.615 or a hospital education program, or is residing in a Department of Human Services **or an Oregon Health Authority** facility.
 - (F) A student who is temporarily residing in a shelter care program certified by the Oregon Youth Authority [or the *Department of Human Services*] or in a juvenile detention facility.
 - (G) A student who is enrolled in a foreign exchange program.
 - (H) A student who is temporarily absent from school because of suspension, a family emergency, or severe health or medical problems that prohibit the student from attending school.
 - (I) A student who has received a General Educational Development (GED) certificate.
- (2) The State Board of Education shall prescribe by rule when an unexplained absence becomes withdrawal, when a student is considered enrolled in school, acceptable alternative education programs under ORS 336.615 to 336.675 and the standards for excused absences for purposes of ORS 339.065 for family emergencies and health and medical problems.

SECTION 214. ORS 339.869 is amended to read:

339.869. (1) The State Board of Education, in consultation with the [*Department of Human Services*] **Oregon Health Authority**, the Oregon State Board of Nursing and the State Board of Pharmacy, shall adopt rules for the administration of prescription and nonprescription medication to students by trained school personnel and for student self-medication. The rules shall include age appropriate guidelines and training requirements for school personnel.

(2) School district boards shall adopt policies and procedures that provide for the administration of prescription and nonprescription medication to students by trained school personnel and for student self-medication. Such policies and procedures shall be consistent with the rules adopted by the State Board of Education under subsection (1) of this section. A school district board shall not require school personnel who have not received appropriate training to administer medication.

SECTION 215. ORS 343.221 is amended to read:

343.221. In order to provide special education for children with disabilities, the district school board of any school district in which there are school-age children who require special education:

(1) Shall submit an annual projected activities and cost statement to the Superintendent of Public Instruction for a program of special education for the district's children with disabilities. The proposed district program shall include provisions for providing special education and related services and be designed to meet the unique needs of all resident children with disabilities.

(2) Shall provide special education for such children consistent with the projected activities and cost statement.

(3) May, when the board considers a contract to be economically feasible and in the interests of the learning opportunities of eligible children, contract for special education for such children with another school district if the district school boards jointly agree to provide special education.

(4) May, when the board considers a contract to be economically feasible and in the interests of the learning opportunities of eligible children, contract for special education for such children with an education service district if:

(a) The contract is consistent with the local service plan of the education service district developed pursuant to ORS 334.175 and the school districts within the education service district approve the contract by a resolution adopted in the manner provided in ORS 334.175.

- (b) The school district contracts with an education service district pursuant to ORS 334.185.
- (5) May contract with private agencies or organizations approved by the State Board of Education for special education.
- (6) May use the services of public agencies, including community mental health **programs** and **community** developmental disabilities programs, which provide diagnostic, evaluation and other related services for children.
- (7) May contract for the provision of related services by a person in private practice if that person is registered, certified or licensed by the State of Oregon as qualified to provide a particular related service that requires registration, certification or licensing by the state.

SECTION 216. ORS 343.499 is amended to read:

343.499. (1)(a) There is created the State Interagency Coordinating Council.

(b) The Governor shall appoint members of the council from a list of eligible appointees provided by the council and agencies described in subsection (2) of this section and shall ensure that the membership of the council reasonably represents the population of this state.

(c) The Governor shall designate one member of the council to serve as the chairperson, or if the Governor chooses not to name a chairperson, the council may elect one of its members to serve as chairperson. However, any member of the council who represents the Department of Education may not serve as the chairperson of the council.

(2) The membership of the council shall be composed as follows:

(a) At least 20 percent of the council members shall be parents, including minority parents, of preschool children with disabilities or of children with disabilities who are 12 years of age or younger who have knowledge of or experience with programs for infants and toddlers with disabilities. At least one council member shall be a parent of an infant or toddler with a disability or of a child with a disability who is six years of age or younger.

(b) At least 20 percent of the council members shall be public or private providers of early intervention and early childhood special education services.

(c) At least one council member shall be a member of the Legislative Assembly.

(d) At least one council member shall be involved in personnel preparation.

(e) At least one council member shall represent the Department of Human Services.

(f) At least one council member shall represent the federal Head Start program.

(g) At least one council member shall represent the Child Care Division of the Employment Department.

(h) At least one council member shall represent the Department of Education.

(i) At least one council member shall represent the Department of Consumer and Business Services.

(j) At least one council member shall represent the State Commission on Children and Families.

(k) At least one council member shall represent the Child Development and Rehabilitation Center of the Oregon Health and Science University.

(L) At least one council member shall be a member of the State Advisory Council for Special Education created under ORS 343.287.

(m) At least one council member shall be a representative designated by the state coordinator for homeless education.

(n) At least one council member shall represent the state child welfare agency responsible for foster care.

(o) At least one council member shall represent the state agency responsible for children's mental health.

(p) At least one council member shall be from the [*agency responsible for the state Medicaid program*] **Oregon Health Authority**.

(q) The council may include other members appointed by the Governor, including but not limited to one representative from the United States Bureau of Indian Affairs or, where there is no school operated or funded by the bureau, from the Indian Health Service or the tribe or tribal council.

(3) An individual appointed to represent a state agency that is involved in the provision of or payment for services for preschool children with disabilities under subsection (2)(e) and (h) to (k) of this section shall have sufficient authority to engage in making and implementing policy on behalf of the agency.

(4) The State Interagency Coordinating Council shall:

(a) Advise the Superintendent of Public Instruction and the State Board of Education on unmet needs in the early childhood special education and early intervention programs for preschool children with disabilities, review and comment publicly on any rules proposed by the State Board of Education and the distribution of funds for the programs and assist the state in developing and reporting data on and evaluations of the programs and services.

(b) Advise and assist the represented public agencies regarding the services and programs they provide to preschool children with disabilities and their families, including public comments on any proposed rules affecting the target population and the distribution of funds for such services, and assist each agency in developing services that reflect the overall goals for the target population as adopted by the council.

(c) Advise and assist the Department of Education and other state agencies in the development and implementation of the policies that constitute the statewide system.

(d) Assist all appropriate public agencies in achieving the full participation, coordination and cooperation for implementation of a statewide system that includes but is not limited to:

(A) Seeking information from service providers, service coordinators, parents and others about any federal, state or local policies that impede timely service delivery; and

(B) Taking steps to ensure that any policy problems identified under subparagraph (A) of this paragraph are resolved.

(e) Advise and assist the Department of Education in identifying the sources of fiscal and other support for preschool services, assigning financial responsibility to the appropriate agencies and ensuring that the provisions of interagency agreements under ORS 343.511 are carried out.

(f) Review and comment on each agency's services and policies regarding services for preschool children with disabilities, or preschool children who are at risk of developing disabling conditions, and their families to the maximum extent possible to assure cost-effective and efficient use of resources.

(g) To the extent appropriate, assist the Department of Education in the resolution of disputes.

(h) Advise and assist the Department of Education in the preparation of applications and amendments thereto.

(i) Advise and assist the Department of Education regarding the transition of preschool children with disabilities.

(j) Prepare and submit an annual report to the Governor and to the United States Secretary of Education on the status of early intervention programs operated within this state.

(5) The council may advise appropriate agencies about integration of services for preschool children with disabilities and at-risk preschool children.

(6) Terms of office for council members shall be three years, except that:

(a) The representative from the State Advisory Council for Special Education shall serve a one-year term; and

(b) The representatives from other state agencies and the representative from the Legislative Assembly shall serve indefinite terms.

(7) Subject to approval by the Governor, the council may use federal funds appropriated for this purpose and available to the council to:

(a) Conduct hearings and forums;

(b) Reimburse nonagency council members pursuant to ORS 292.495 for attending council meetings, for performing council duties, and for necessary expenses, including child care for parent members;

(c) Pay compensation to a council member if the member is not employed or if the member must forfeit wages from other employment when performing official council business;

- (d) Hire staff; and
- (e) Obtain the services of such professional, technical and clerical personnel as may be necessary to carry out its functions.
- (8) Except as provided in subsection (7) of this section, council members shall serve without compensation.
- (9) The Department of Education shall provide clerical and administrative support, including staff, to the council to carry out the performance of the council's function as described in this section.
- (10) The council shall meet at least quarterly. The meetings shall be announced publicly and, to the extent appropriate, be open and accessible to the general public.
- (11) No member of the council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

SECTION 217. ORS 343.961 is amended to read:

343.961. (1) The Department of Education shall be responsible for payment of the cost of the education in programs with which the [*Department of Human Services*] **Oregon Health Authority** or Oregon Youth Authority contracts for long-term care or treatment. Programs eligible for such education shall be in accordance with criteria adopted by rule by the State Board of Education.

(2) The Department of Education shall be responsible for payment of the costs of such education by contract with the school district, excluding transportation, care, treatment and medical expenses. The resident district shall provide transportation to pupils enrolled in programs under ORS 430.715 who live at home but require day treatment. The payments may be made to the school district or, at the discretion of the school district, to the district providing the education, as set forth in subsection (3) of this section, from the funds appropriated for the purpose.

(3) The school district in which the agency is located is responsible for providing the education directly or through an adjacent school district or through the education service district in which the program is located or one contiguous thereto. The instruction may be given in facilities of such districts or in facilities provided by such agency.

(4) The school district may request the Department of Education to combine several private agency school programs into one contract with a school district, an adjacent school district or an education service district.

(5) The [*Department of Human Services*] **Oregon Youth Authority** shall give the school district providing the education at a treatment program 14 days' notice before a student is dismissed from the treatment program.

(6) The Department of Education may make advances to such school district from funds appropriated therefor based on the estimated agreed cost of educating the pupils per school year. Advances equal to 25 percent of such estimated cost may be made on September 1, December 1 and March 1 of the current year. The balance may be paid whenever the full determination of cost is made.

(7) School districts which provide the education described in this section on a year-round plan may apply for 25 percent of the funds appropriated therefor on July 1, October 1, January 1, and 15 percent on April 1. The balance may be paid whenever the full determination of cost is made.

(8) In addition to the payment methods described in this section, the Department of Education may:

(a) Negotiate interagency agreements to pay for the cost of education in treatment programs operated under the auspices of the State Board of Higher Education; and

(b) Negotiate intergovernmental agreements to pay for the cost of education in treatment programs operated under the auspices of the Oregon Health and Science University Board of Directors.

SECTION 218. ORS 345.535 is amended to read:

345.535. (1) In adopting criteria for the registration of private schools, the State Board of Education shall take into consideration the unique qualities of private education while seeking to further the educational opportunities of students enrolled in such schools.

(2) After consultation with the advisory committee appointed under ORS 345.575, the State Board of Education shall establish by rule minimum criteria for the registration of private schools.

(3) In establishing standards, the State Board of Education shall comply with the rules of the State Fire Marshal and the [Department of Human Services] **Oregon Health Authority** relating to fire protection, health and sanitation.

SECTION 219. ORS 346.015 is amended to read:

346.015. (1) Prior to convening a meeting to prepare an individual education plan for a child with mental retardation or a developmental disability for whom placement at a school under ORS 346.010 may be considered, the agency that is providing the education for the child shall notify the local community [mental health and] developmental disabilities program. The case manager responsible for programs for children with mental retardation or developmental disabilities, in consultation with the Department of Human Services, shall evaluate whether the child also has needs for alternative residential care or other support services. If the evaluation determines this to be the case, but documents that community resources are not available to meet these needs, the school district may proceed with the meeting to prepare the individual education plan in which placement at a school under ORS 346.010 may be considered.

(2) An agency providing education under subsection (1) of this section may initiate the procedure in subsection (1) of this section for any child who does not have mental retardation or a developmental disability when in the agency's judgment a treatment or residential issue is prompting proposed placement under ORS 346.010.

(3) A child may not be placed in a school operated under ORS 346.010 unless the district superintendent or the superintendent's designee has signed a statement declaring that the district cannot provide a free appropriate public education for the child commensurate with the needs of the child as identified by the individual education plan of the child and that the school is the least restrictive environment in which the child can be educated.

(4) By rule, the State Board of Education shall determine procedures to be followed by local education agencies in carrying out this section.

SECTION 220. ORS 346.035 is amended to read:

346.035. For a child who is enrolled under ORS 346.010 and who has mental retardation or a developmental disability, the Department of Education shall notify the community [mental health and] developmental disabilities program of the date of the annual review of the individual education plan of the child for the purpose of including in the review the assigned case manager's assessment of community resources that are available for treatment or residential needs the child might have.

SECTION 221. ORS 348.320 is amended to read:

348.320. (1) A person shall be eligible for a loan under ORS 348.310 to 348.390 if the person is:

(a) A bona fide resident of this state;

(b) Accepted for enrollment, or is a student in good standing in the professional medical program at an accredited medical school located in the United States or in an accredited school of osteopathic medicine;

(c) As a result of personal financial resources, unable to pursue a program of study in the absence of a loan or would be unable to do so without great hardship; and

(d) Desirous of practicing medicine in a rural community in this state, and in an area which meets the qualifications of a medical shortage area.

(2) The person desiring consideration for a loan under ORS 348.310 to 348.390 shall apply to the Oregon Student Assistance Commission.

(3) The person desiring consideration for a loan under ORS 348.310 to 348.390 shall agree in writing to practice medicine in a medical shortage area as defined by the [Director of Human Services] **Oregon Health Authority**, for a period equal to the period covered by the loan, but no less than two years.

SECTION 222. ORS 351.105 is amended to read:

351.105. In order to carry out the duties described in ORS 352.008, the State Board of Higher Education, in consultation with the [Department of Human Services] **Oregon Health Authority**,

shall adopt by rule, as a minimum, descriptions of the content of what shall be included in the policy and plan described in ORS 352.008.

SECTION 223. ORS 352.008 is amended to read:

352.008. In consultation with the [*Department of Human Services*] **Oregon Health Authority**, each state institution of higher education shall adopt a comprehensive alcohol and drug abuse policy and implementation plan.

SECTION 224. ORS 401.259 is amended to read:

401.259. (1) The following [*departments*] **state agencies** shall designate a person within each [*department*] **agency** to act as a liaison with the Office of Emergency Management:

- (a) The Department of Transportation;
- (b) The State Department of Agriculture;
- (c) The Department of Environmental Quality;
- (d) The Department of Human Services;
- (e) The State Department of Energy;
- (f) The Oregon Department of Administrative Services;
- (g) The Department of State Police;
- (h) The State Department of Geology and Mineral Industries; [*and*]
- (i) The Oregon Health Authority; and**
- [*i*] **(j) The Oregon Military Department.**

(2) Each person designated as a liaison under subsection (1) of this section shall assist in the coordination of the functions of the person's [*department*] **agency** that relate to emergency preparedness and response with similar functions of the Office of Emergency Management.

SECTION 225. ORS 401.300 is amended to read:

401.300. (1) The Director of the Office of Emergency Management, pursuant to the authority to administer grant programs for seismic rehabilitation provided in ORS 401.270, shall develop a grant program for the disbursement of funds for the seismic rehabilitation of critical public buildings, including hospital buildings with acute inpatient care facilities, fire stations, police stations, sheriffs' offices, other facilities used by state, county, district or municipal law enforcement agencies and buildings with a capacity of 250 or more persons that are routinely used for student activities by kindergarten through grade 12 public schools, community colleges, education service districts and institutions of higher education. The funds for the seismic rehabilitation of critical public buildings under the grant program are to be provided from the issuance of bonds pursuant to the authority provided in Articles XI-M and XI-N of the Oregon Constitution.

(2) The grant program shall include the appointment of a grant committee. The grant committee may be composed of any number of persons with qualifications that the director determines necessary. However, the director shall include persons with experience in administering state grant programs and representatives of entities with responsibility over critical public buildings. The director shall also include as permanent members representatives of:

- (a) The Department of Human Services;
- (b) The State Department of Geology and Mineral Industries;
- (c) The Seismic Safety Policy Advisory Commission;
- (d) The Oregon Department of Administrative Services;
- (e) The Department of Education;
- (f) The Oregon Health Authority;**
- [*f*] **(g) The Oregon Fire Chiefs' Association;**
- [*g*] **(h) The Oregon Association Chiefs of Police; and**
- [*h*] **(i) The Oregon Association of Hospitals and Health Systems.**

(3) The director shall determine the form and method of applying for grants from the grant program, the eligibility requirements for grant applicants, and general terms and conditions of the grants. The director shall also provide that the grant committee review grant applications and make a determination of funding based on a scoring system that is directly related to the statewide needs

assessment performed by the State Department of Geology and Mineral Industries. Additionally, the grant process may:

(a) Require that the grant applicant provide matching funds for completion of any seismic rehabilitation project.

(b) Provide authority to the grant committee to waive requirements of the grant program based on special circumstances such as proximity to fault hazards, community value of the structure, emergency functions provided by the structure and storage of hazardous materials.

(c) Allow an applicant to appeal any determination of grant funding to the director for reevaluation.

(d) Provide that applicants release the state, the director and the grant committee from any claims of liability for providing funding for seismic rehabilitation.

(e) Provide separate rules for funding rehabilitation of structural and nonstructural building elements.

(4) Subject to the grant rules established by the director and subject to reevaluation by the director, the grant committee has the responsibility to review and make determinations on grant applications under the grant program established pursuant to this section.

SECTION 226. ORS 401.347 is amended to read:

401.347. The Office of Emergency Management shall provide technical, clerical and other necessary support services to the Seismic Safety Policy Advisory Commission. The Department of Consumer and Business Services, [*the Department of Human Services,*] the State Department of Geology and Mineral Industries, the Department of Land Conservation and Development, the Department of Transportation, **the Oregon Health Authority**, the Water Resources Department and the Oregon University System shall provide assistance, as required, to the commission to enable it to meet its objectives.

SECTION 227. ORS 401.654 is amended to read:

401.654. (1) The [*Department of Human Services*] **Oregon Health Authority** may establish a registry of emergency health care providers who are available to provide health care services during an emergency or crisis. The [*department*] **authority** may require training related to the provision of health care services in an emergency or crisis as a condition of registration.

(2) The [*department*] **authority** shall issue identification cards to health care providers included in the registry established under this section that:

(a) Identify the health care provider;

(b) Indicate that the health care provider is registered as an Oregon emergency health care provider;

(c) Identify the license or certification held by the health care provider; and

(d) Identify the health care provider's usual area of practice if that information is available and the [*department*] **authority** determines that it is appropriate to provide that information.

(3) The [*department*] **authority** by rule shall establish a form for identification cards issued under subsection (2) of this section.

(4) The [*department*] **authority** shall support and provide assistance to the Office of Emergency Management in emergencies or crises involving the public health or requiring emergency medical response.

SECTION 228. ORS 401.657 is amended to read:

401.657. (1) The [*Department of Human Services*] **Oregon Health Authority** may designate all or part of a health care facility or other location as an emergency health care center. Upon the Governor declaring a state of emergency under ORS 401.055, or proclaiming a state of public health emergency after determining that a threat to the public health is imminent and likely to be widespread, life-threatening and of a scope that requires immediate medical action to protect the public health, emergency health care centers may be used for:

(a) Evaluation and referral of individuals affected by the emergency;

(b) Provision of health care services; and

(c) Preparation of patients for transportation.

(2) The [department] **Oregon Health Authority** may enter into cooperative agreements with local public health authorities that allow local public health authorities to designate emergency health care centers under this section.

(3) An emergency health care center designated under this section must have an emergency operations plan and a credentialing plan that governs the use of emergency health care providers registered under ORS 401.654 and other health care providers who volunteer to perform health care services at the center under ORS 401.651 to 401.670. The emergency operations plan and credentialing plan must comply with rules governing those plans adopted by the [department] **Oregon Health Authority**.

SECTION 229. ORS 401.661 is amended to read:

401.661. Upon the Governor declaring a state of emergency under ORS 401.055, or proclaiming a state of public health emergency after determining that a threat to the public health is imminent and likely to be widespread, life-threatening and of a scope that requires immediate medical action to protect the public health:

(1) The [Department of Human Services] **Oregon Health Authority, in conjunction with the Department of Human Services for facilities licensed by the department,** may direct emergency health care providers registered under ORS 401.654 who are willing to provide health care services on a voluntary basis to proceed to any place in this state where health care services are required by reason of the emergency or crisis; and

(2) Any emergency health care provider registered under ORS 401.654 or other health care provider may volunteer to perform health care services described in ORS 401.657 at any emergency health care center or health care facility in the manner provided by ORS 401.664.

SECTION 230. ORS 401.667 is amended to read:

401.667. (1) Emergency health care providers registered under ORS 401.654 and other health care providers who volunteer to perform health care services without compensation under ORS 401.651 to 401.670 are agents of the state under ORS 30.260 to 30.300 for the purposes of any claims arising out of those services.

(2) Health care facilities and other persons operating emergency health care centers designated under ORS 401.657 are agents of the state under ORS 30.260 to 30.300 for the purposes of any claims arising out of services provided without compensation through those centers or facilities under ORS 401.651 to 401.670.

(3) An emergency health care provider registered under ORS 401.654 participating in training authorized by the [Department of Human Services] **Oregon Health Authority** under ORS 401.651 to 401.670 is an agent of the state under ORS 30.260 to 30.300 for the purposes of any claims arising out of that training.

(4) The provisions of subsections (1) and (2) of this section apply only to emergency health care centers or health care facilities that have adopted emergency operations plans and credentialing plans that govern the use of emergency health care providers registered under ORS 401.654 and other health care providers who volunteer to perform health care services under ORS 401.651 to 401.670. An emergency operations plan and a credentialing plan must comply with rules governing those plans adopted by the [Department of Human Services] **authority**.

SECTION 231. ORS 401.670 is amended to read:

401.670. The [Department of Human Services] **Oregon Health Authority** shall adopt all rules necessary for the implementation of ORS 401.651 to 401.670.

SECTION 232. ORS 401.871 is amended to read:

401.871. (1) The State Interoperability Executive Council is created within the Department of State Police. The membership of the council shall consist of:

(a) Two members from the Legislative Assembly, as follows:

(A) The President of the Senate shall appoint one member from the Senate with an interest in public safety communications infrastructure; and

(B) The Speaker of the House of Representatives shall appoint one member from the House of Representatives with an interest in public safety and wireless communications infrastructure.

(b) The following members appointed by the Governor:
(A) One member from the Department of State Police;
(B) One member from the Office of Emergency Management;
(C) One member from the State Forestry Department;
(D) One member from the Department of Corrections;
(E) One member from the Department of Transportation;
(F) One member from the Oregon Department of Administrative Services;
(G) One member from the Department of Human Services;
(H) One member from the Oregon Health Authority;
[(H)] (I) One member from the Oregon Military Department;
[(I)] (J) One member from the Department of Public Safety Standards and Training;
[(J)] (K) One member of an Indian tribe as defined in ORS 97.740;
[(K)] (L) One member from a nonprofit professional organization devoted to the enhancement of public safety communications systems; and
[(L)] (M) One member from the public.

(c) The following members appointed by the Governor with the concurrence of the President of the Senate and the Speaker of the House of Representatives:

- (A) One member from the Oregon Fire Chiefs' Association;
- (B) One member from the Oregon Association Chiefs of Police;
- (C) One member from the Oregon State Sheriffs' Association;
- (D) One member from the Association of Oregon Counties;
- (E) One member from the League of Oregon Cities; and
- (F) One member from the Special Districts Association of Oregon.

(2) Each agency or organization identified in subsection (1)(b)(A) to [(I)] (J) and (1)(c) of this section shall recommend a person from the agency or organization for membership on the council.

(3) Members of the council are not entitled to compensation, but in the discretion of the Superintendent of State Police may be reimbursed from funds available to the Department of State Police for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

(4) Members of the Legislative Assembly appointed to the council are nonvoting members and may act in an advisory capacity only.

SECTION 233. ORS 408.305 is amended to read:

408.305. As used in ORS 408.305 to 408.340, unless the context requires otherwise:

(1) "Agent Blue" means the herbicide composed primarily of cacodylic acid (organic arsenic) and inorganic arsenic.

(2) "Agent Orange" means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.

(3) "Agent White" means any herbicide composed primarily of 2, 4, D and picloram.

(4) "Causative agent" includes Agent Blue, Agent Orange, Agent White and any other combination of chemicals consisting primarily of 2, 4, D or 2, 4, 5, T or any other chemical or biological agent used by any government involved in the Vietnam Conflict, or diseases endemic to Southeast Asia, including, but not limited to, the disease known as melioidosis.

[(5)] "*Department*" means the *Department of Human Services*.

[(6)] (5) "Veteran" means any individual who resides in this state, who served on active duty in the Armed Forces of the United States for a period of not less than 180 days any part of which occurred between January 1, 1962, and May 7, 1975, within the borders of Vietnam, Cambodia, Laos or Thailand, and who was either a resident of this state at the time of enlistment, induction or other entry into the Armed Forces or became a bona fide resident of Oregon prior to April 1, 1981.

SECTION 234. ORS 408.310 is amended to read:

408.310. (1) A physician who has primary responsibility for the treatment of a veteran who may have been exposed to causative agents while serving in the Armed Forces of the United States or for the treatment of a veteran's spouse, surviving spouse or minor child who may be exhibiting

symptoms or conditions that may be attributable to the veteran's exposure to causative agents shall, at the request and direction of the veteran, veteran's spouse or surviving spouse or the parent or guardian of such minor child, submit a report to the [*Department of Human Services*] **Oregon Health Authority**. The report shall be made on a form adopted by the [*department*] **authority** and made available to physicians and hospitals in this state.

(2) If there is no physician having primary responsibility for the treatment of a veteran, veteran's spouse, surviving spouse or minor child, then the senior medical supervisor of the hospital or clinic treating the veteran, veteran's spouse, surviving spouse or minor child shall submit the report described in this section to the [*department*] **authority** at the request and direction of the veteran, veteran's spouse or surviving spouse or the parent or legal guardian of a veteran's minor child.

(3) The form adopted by the [*department*] **authority** under this section shall list the symptoms commonly attributed to exposure to causative agents, and shall require the following information:

(a) Symptoms of the patient which may be related to exposure to causative agents.

(b) A diagnosis of the patient's condition.

(c) Methods of treatment prescribed.

(d) Any other information required by the [*department*] **authority**.

(4) The [*department*] **authority**, after receiving a report from a physician, hospital or clinic under this section, may require the veteran, veteran's spouse, surviving spouse or minor child to provide such other information as may be required by the [*department*] **authority**.

SECTION 235. ORS 408.320 is amended to read:

408.320. The Oregon Public Health Advisory Board created under ORS 431.195 shall:

(1) Order the compilation of statistical data from information obtained under ORS 408.310 and determine the use and dissemination of that data.

(2) Make recommendations to the Director of [*Human Services*] **the Oregon Health Authority** or the Director of Veterans' Affairs concerning the implementation and operation of programs authorized by ORS 408.300 to 408.340.

(3) Assess programs of federal agencies operating for the benefit of veterans exposed to causative agents and their families, and make recommendations to the appropriate agencies for the improvement of those programs.

(4) Suspend or terminate specific programs or duties required under ORS 408.300 to 408.340 when necessary to prevent duplication of those programs or duties by other governmental agencies.

(5) Apply for, receive and accept any grants or contributions available from the United States or any of its agencies for the purpose of carrying out ORS 408.300 to 408.340.

(6) When the advisory board considers it necessary for the health and welfare of veterans and the spouses, surviving spouses and minor children of veterans, ask the Attorney General to initiate proceedings as provided under ORS 408.335.

(7) Report biennially to the Legislative Assembly or to the Emergency Board, as appropriate, as necessary to accomplish the objectives of ORS 408.300 to 408.340 concerning the programs instituted under ORS 408.300 to 408.340.

SECTION 236. ORS 408.325 is amended to read:

408.325. (1) The [*Department of Human Services*] **Oregon Health Authority** and the Oregon Public Health Advisory Board shall institute a cooperative program to refer veterans to appropriate state and federal agencies for the purpose of filing claims to remedy medical and financial problems caused by exposure to causative agents.

(2) The Director of [*Human Services*] **the Oregon Health Authority**, after receiving the recommendations of the advisory board, shall adopt rules to provide for the administration and operation of programs authorized by ORS 408.300 to 408.340. The director [*of Human Services*] shall cooperate with appropriate state and federal agencies in providing services under ORS 408.300 to 408.340.

SECTION 237. ORS 408.380 is amended to read:

408.380. (1) The Oregon Veterans' Home authorized by section 1, chapter 591, Oregon Laws 1995, is subject to all state laws and administrative rules and all federal laws and administrative regu-

lations to which long term care facilities operated by nongovernmental entities are subject, except for the requirement to obtain a certificate of need under ORS 442.315 from the [Department of Human Services] **Oregon Health Authority**.

(2) As used in this section, "long term care facility" has the meaning given that term in ORS 442.015.

SECTION 238. ORS 408.570 is amended to read:

408.570. When a veteran who has been adjudged mentally ill is eligible for treatment in a United States veterans facility and commitment is necessary for the proper care and treatment of such veteran, the [Department of Human Services] **Oregon Health Authority** or community mental health [and developmental disabilities] program director, as provided under ORS 426.060, may, upon receipt of a certificate of eligibility from the United States Department of Veterans Affairs, assign the person to the United States Department of Veterans Affairs for care, custody and treatment in a United States veterans facility. Upon admission to any such facility, the veteran shall be subject to the rules and regulations of the United States Department of Veterans Affairs and provisions of ORS 426.060 to 426.395 and related rules and regulations of the [Department of Human Services] **Oregon Health Authority**. The chief officer of such facility shall be vested with the same powers exercised by superintendents of state hospitals for persons with mental illness within this state with reference to the retention, transfer, trial visit or discharge of the veteran so assigned. The commitment of a veteran to a veterans facility within this state by a court of another state under a similar provision of law has the same force and effect as if the veteran was committed to a veterans facility within that other state.

SECTION 239. ORS 408.580 is amended to read:

408.580. Upon receipt of a certificate of eligibility and available facilities, the [Department of Human Services] **Oregon Health Authority** may cause to be transferred any veteran from any facility to which the veteran has been assigned to a United States veterans facility. No veteran under sentence by any court, or committed by any court after having been charged with any crime and acquitted on the ground of mental disease or defect, may be transferred without an order of such court authorizing the transfer. Whenever any veteran, not a convict, has been committed by order of a court and is transferred as provided in this section, the order of commitment shall be held to apply to the facility to which the veteran is transferred as to any other facility to which the veteran could be assigned or transferred under ORS 426.060.

SECTION 240. ORS 409.010 is amended to read:

409.010. (1) The Department of Human Services is created.

(2) The department is responsible for the delivery and administration of programs and services relating to:

(a) Children and families, including but not limited to child protective services, foster care, residential care for children and adoption services;

(b) Elderly persons and persons with disabilities, including but not limited to social, health and protective services and promotion of hiring of otherwise qualified persons who are certifiably disabled;

(c) Persons who, as a result of the person's or the person's family's economic, social or health condition, require financial assistance, [institutional care, rehabilitation or other social and health] **or other social** services;

[(d) Health and health-related affairs, including but not limited to medical assistance and services, public health services, migrant health services, licensing of health facilities and coordination of the activities of professional and occupational licensing boards;]

[(e) (d) [Mental health and] Developmental disabilities;

[(f) (e) Vocational rehabilitation for individuals with disabilities;

[(g) Alcohol abuse, drug abuse, addiction and chemical dependency problems;]

[(h) (f) Licensing and regulation of individuals, facilities, **institutions** and programs providing health and human services **and long term care services**, in accordance with the provisions of state and federal law; and

(i) (g) [Any] All other [health and] human service programs and functions delegated to the department by or in accordance with the provisions of state and federal law.

(3) The department shall be the recipient of all federal funds paid or to be paid to the state to enable the state to provide the programs and services assigned to the department.

(4)(a) All personnel of the department, including those engaged in the administration of vocational rehabilitation programs, public assistance programs and services to families or children in compliance with the federal Social Security laws, shall be subject to the merit system prescribed in the State Personnel Relations Law. For purposes of the State Personnel Relations Law, the department is the appointing authority of all employees in the department.

(b) The Director of Human Services, in conformity with the State Personnel Relations Law, may appoint and employ such personnel as may be necessary for the department, and may appoint and fix the compensation of all assistants and employees of the department.

(c) The director may authorize reimbursement of such expenses as are approved by the department and incurred by assistants and employees of the department, and by volunteers or other persons not employed by the department, in carrying out duties assigned or authorized by the department.

(5) The director may designate employees to be custodians of records within any of the organizational units of the department, and persons so designated shall have the duties and powers of custodians of public records as prescribed by law. Such designation shall be in writing and notice thereof shall be filed in the office of the Secretary of State, with the director and in the organizational unit to which the authorization applies.

SECTION 241. ORS 409.320 is amended to read:

409.320. The Director of [Human Services] **the Oregon Health Authority** shall require each health licensing board in the [Department of Human Services] **Oregon Health Authority** to maintain a register of the names and current addresses of all persons holding valid licenses, certificates of registration or other evidence of authority required to practice the occupation or profession, or operate the facility within the jurisdiction of such board and periodically, as the director may require, to file a copy of the register at the office of the [department] **authority**. Any board that is authorized or required to distribute a register described in this section may collect a fee to cover the costs of publication, such fee to be handled as other receipts of the board are handled.

SECTION 242. ORS 409.330 is amended to read:

409.330. The Director of [Human Services] **the Oregon Health Authority**, or the designee of the director, shall serve as an ex officio member of all health-related licensing boards in the [department] **Oregon Health Authority**, but without the right to vote. However, nothing in this section is intended to authorize the director to intervene in the internal functions and administration of the boards.

SECTION 243. ORS 409.410 is amended to read:

409.410. (1) The Director of [Human Services] **the Oregon Health Authority** shall administer all alcohol and drug abuse programs, including but not limited to programs or components of programs described in ORS 430.397 to 430.401, 475.225, 743.557 and 743.558 and ORS chapters 430 and 801 to 822.

(2) Subject to ORS 417.300 and 417.305, the director shall:

(a) Report to the Legislative Assembly on accomplishments and issues occurring during each biennium, and report on a new biennial plan describing resources, needs and priorities for all alcohol and drug abuse programs.

(b) Develop within the [Department of Human Services] **Oregon Health Authority** priorities for alcohol and drug abuse programs and activities.

(c) Monitor the priorities of approved alcohol and drug abuse related programs in all other state agencies.

(d) Conduct statewide and special planning processes which provide for participation from state and local agencies, groups and individuals.

(e) Identify the needs of special populations including minorities, elderly, youth, women and individuals with disabilities.

(f) Subject to ORS chapter 183, adopt such rules as are necessary for the performance of the duties and functions specified by this section, ORS [409.010 and] 430.255 to 430.630, or otherwise lawfully delegated.

(3) The director may apply for, receive and administer funds, including federal funds and grants, from sources other than the state. Subject to expenditure limitation set by the Legislative Assembly, funds received under this subsection may be expended by the director:

(a) For the study, prevention or treatment of alcohol and drug abuse and dependence in this state.

(b) To provide training, both within this state and in other states, in the prevention and treatment of alcohol and drug abuse and dependence.

SECTION 244. ORS 409.420 is amended to read:

409.420. In addition to the Director of [*Human Services*] **the Oregon Health Authority's** other responsibilities, the director shall place special emphasis on all of the following:

(1) Establishing standards for both public and private alcohol and drug abuse prevention, intervention and treatment programs. It is the policy of the Legislative Assembly that all programs providing alcohol and drug abuse related prevention, intervention and treatment services in this state, with public funds, meet the standards established under this subsection.

(2) Providing training for state employees dealing directly with appropriate client groups to insure better recognition and understanding of alcohol and drug abuse problems. Training is also to be directed at increasing knowledge of appropriate and available resources for assisting clients with alcohol and drug abuse problems.

(3) Conducting continuing long-term evaluation of clients and other recipients of services from all [*Department of Human Services*] **Oregon Health Authority** funded programs, for periods of up to 24 months following completion of service, to assess service effectiveness and enable appropriate corrective actions.

(4) Ensuring financial audits and program reviews of alcohol and drug abuse related programs and services that receive funds, including beer and wine tax revenues distributed under ORS 430.380 and 471.810, from any state agency.

SECTION 245. ORS 409.425 is amended to read:

409.425. (1) For purposes of this section, "inhalant" has the meaning given that term in ORS 167.808.

(2) The Director of [*Human Services*] **the Oregon Health Authority** shall develop education resources focusing on the problem of inhalant abuse by minors. The director shall ensure that special emphasis is placed on the education of parents about the risks of inhalant use. The director shall develop tools to help parents talk to their children about the extraordinary risks associated with even a single use of inhalants, as well as those risks that arise from repeated use.

(3) The director shall develop education resources focusing on merchants that sell products that contain inhalants. The director shall encourage merchants that sell products containing inhalants to post signs that inform the public that using inhalants for the purpose of intoxication is illegal and potentially deadly.

(4) The director shall develop and print a standard sign for the purposes of subsection (3) of this section, and shall make the sign available to merchants that elect to display the sign. The sign shall:

(a) Contain the message, "Illegal to inhale fumes for purpose of intoxication. Fumes may cause serious injury or death!"

(b) Be at least five by seven inches in size with lettering that is at least three-eighths of an inch in height.

(c) Contain a graphic depiction of the message to convey the message to a person who cannot read the message. If the depiction includes a picture of a person, the depiction of the person shall be of a minor and shall not reflect any specific race or culture.

(5) The sign developed under subsection (4) of this section shall be in English and in such other languages as may be commonly used in this state. Merchants shall be encouraged to post signs in languages other than English if English is not the primary language of a significant number of the patrons of the business.

SECTION 246. ORS 409.430 is amended to read:

409.430. (1) The [*Department of Human Services*] **Oregon Health Authority**, in collaboration with county representatives, prior to January 1, 2000, shall develop a plan for the administration of the statewide gambling addiction programs and delivery of program services.

(2) The [*Department of Human Services*] **authority** may appoint an advisory committee or designate an existing advisory committee to make recommendations to the [*department*] **authority** concerning:

- (a) Performance standards and evaluation methodology;
- (b) Fiscal reporting and accountability;
- (c) Delivery of services; and
- (d) A distribution plan for use of available funds.

(3) The distribution plan for the moneys available in the Problem Gambling Treatment Fund shall be based on performance standards.

(4) The [*Department of Human Services*] **authority** may enter into an intergovernmental agreement or other contract for the delivery of services related to programs for the prevention and treatment of gambling addiction and other emotional and behavioral problems related to gambling.

(5) Before entering into an agreement or contract under subsection (4) of this section, the [*Department of Human Services*] **authority** must consider the experience, performance and program capacity of those organizations currently providing services.

SECTION 247. ORS 409.435 is amended to read:

409.435. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Problem Gambling Treatment Fund. All moneys in the Problem Gambling Treatment Fund are continuously appropriated to the [*Department of Human Services*] **Oregon Health Authority** to be expended for programs for the prevention and treatment of gambling addiction and other emotional and behavioral problems related to gambling and for the administration of the programs.

(2) The Problem Gambling Treatment Fund shall consist of:

- (a) The net proceeds from the Oregon State Lottery allocated to the fund under ORS 461.549;
- (b) Moneys appropriated to the fund by the Legislative Assembly; and
- (c) Interest earnings on moneys in the fund.

SECTION 248. ORS 409.500 is amended to read:

409.500. (1) The Pain Management Commission is established within the [*Department of Human Services*] **Oregon Health Authority**. The commission shall:

- (a) Develop pain management recommendations;
- (b) Develop ways to improve pain management services through research, policy analysis and model projects; and
- (c) Represent the concerns of patients in Oregon on issues of pain management to the Governor and the Legislative Assembly.

(2) The pain management coordinator of the [*Department of Human Services*] **authority** shall serve as staff to the commission.

SECTION 249. ORS 409.520 is amended to read:

409.520. (1) The Pain Management Commission shall consist of 19 members as follows:

(a) Seventeen members shall be appointed by the Director of [*Human Services*] **the Oregon Health Authority**. Prior to making appointments, the director shall request and consider recommendations from individuals and public and private agencies and organizations with experience or a demonstrated interest in pain management issues, including but not limited to:

- (A) Physicians licensed under ORS chapter 677 or organizations representing physicians;
- (B) Nurses licensed under ORS chapter 678 or organizations representing nurses;

(C) Psychologists licensed under ORS 675.010 to 675.150 or organizations representing psychologists;

(D) Physician assistants licensed under ORS chapter 677 or organizations representing physician assistants;

(E) Chiropractic physicians licensed under ORS chapter 684 or organizations representing chiropractic physicians;

(F) Naturopaths licensed under ORS chapter 685 or organizations representing naturopaths;

(G) Clinical social workers licensed under ORS 675.510 to 675.600 or organizations representing clinical social workers;

(H) Acupuncturists licensed under ORS 677.759;

(I) Pharmacists licensed under ORS chapter 689;

(J) Palliative care professionals or organizations representing palliative care professionals;

(K) Mental health professionals or organizations representing mental health professionals;

(L) Health care consumers or organizations representing health care consumers;

(M) Hospitals and health plans or organizations representing hospitals and health plans;

(N) Patients or advocacy groups representing patients;

(O) Dentists licensed under ORS chapter 679;

(P) Occupational therapists licensed under ORS 675.210 to 675.340;

(Q) Physical therapists licensed under ORS 688.010 to 688.201; and

(R) Members of the public.

(b) Two members shall be members of a legislative committee with jurisdiction over human services issues, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives. Both members shall be nonvoting, ex officio members of the commission.

(2) The term of office of each member is four years, but a member serves at the pleasure of the appointing authority. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

SECTION 250. ORS 409.530 is amended to read:

409.530. (1) The Director of *[Human Services]* **the Oregon Health Authority** shall select one member of the Pain Management Commission as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the director determines.

(2) A majority of the voting members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every six months at a place, day and hour determined by the director. The commission also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission.

SECTION 251. ORS 409.540 is amended to read:

409.540. There is established the Pain Management Fund in the *[Department of Human Services Account established under ORS 409.060]* **Oregon Health Authority Fund established under section 19 of this 2009 Act.** All moneys credited to the Pain Management Fund are continuously appropriated for the purposes of ORS 409.500 to 409.570 to be expended by the Pain Management Commission established under ORS 409.500.

SECTION 252. ORS 409.600 is amended to read:

409.600. (1) The Women, Infants and Children Program is established in the *[Department of Human Services]* **Oregon Health Authority.** The purpose of the program is to serve as an adjunct to health care by providing nutritious food, nutrition education and counseling, health screening and referral services to pregnant and breast-feeding women and to infants and children in certain high-risk categories.

(2) The *[department]* **authority** shall adopt:

(a) Standards and procedures to guide administration of the program by the state in conformity with federal requirements and to define the rights, responsibilities and legal procedures of program vendors; and

(b) Rules necessary to implement and carry out the provisions of this section.

(3)(a) In addition to any other penalty provided by law, the [department] **authority** may assess a civil penalty against any person for violation of any rule of the [department] **authority** relating to the Women, Infants and Children Program. The [department] **authority** shall adopt by rule criteria for the amount of civil penalties to be assessed under this section.

(b) All penalties recovered under this section shall be deposited into the [General Fund of the State Treasury and credited to a subaccount of the Department of Human Services Account designated by the department] **Oregon Health Authority Fund and credited to an account designated by the authority**. Moneys deposited are appropriated continuously to the [department] **authority** and shall be used only for the administration and enforcement of this section.

SECTION 253. ORS 409.619 is amended to read:

409.619. (1) The Oregon Council on Health Care Interpreters is created in the [Department of Human Services] **Oregon Health Authority**. The council shall consist of 25 members appointed as follows:

(a) The Governor shall appoint two members from each of the following groups:

(A) Consumers of medical services who are persons with limited English proficiency and who use health care interpreters;

(B) Educators who either teach interpreters or persons in related educational fields, or who train recent immigrants and persons with limited English proficiency;

(C) Persons with expertise and experience in administration or policymaking related to the development and operation of policies, programs or services related to interpreters, and who have familiarity with the rulings of the federal Office for Civil Rights concerning interpreter services for various institutions;

(D) Health care providers, consisting of one physician and one registered nurse, who utilize interpreter services regularly in their practice;

(E) Representatives of safety net clinics that predominantly serve persons with limited English proficiency; and

(F) Representatives of hospitals, health systems and health plans predominantly serving persons with limited English proficiency.

(b) The Governor shall appoint one representative from each of the following agencies and organizations after consideration of nominations by the executive authority of each:

(A) The Commission on Asian Affairs;

(B) The Commission on Black Affairs;

(C) The Commission on Hispanic Affairs;

(D) The Commission on Indian Services;

(E) The International Refugee Center of Oregon;

(F) The Oregon Judicial Department's Certified Court Interpreter program;

(G) The Commission for Women; and

(H) The Institute for Health Professionals of Portland Community College.

[c] *The Director of Human Services shall appoint one member from each of the following:*

[A] *The Department of Human Services;*

[B] *The Office of Medical Assistance Programs;*

[C] *The Mental Health and Developmental Disability Services Division;*

[D] *The Senior and Disabled Services Division; and*

[E] *The Health Division.*

(c) **The Director of the Oregon Health Authority shall appoint three members including:**

(A) **One member with responsibility for administering mental health programs;**

(B) **One member with responsibility for administering medical assistance programs; and**

(C) **One member with responsibility for administering public health programs.**

(d) **The Director of Human Services shall appoint:**

(A) **One member with responsibility for administering developmental disabilities programs; and**

(B) **One member with responsibility for administering programs for seniors and persons with disabilities.**

[(d)] (e) The membership of the council shall be appointed so as to be representative of the racial, ethnic, cultural, social and economic diversity of the people of this state.

(2) The term of a member shall be three years. A member may be reappointed.

(3) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term. The appointing authority may appoint a replacement for any member of the council who misses more than two consecutive meetings of the council. The newly appointed member shall represent the same group as the vacating member.

(4) The council shall select one member as chairperson and one member as vice chairperson, for such terms and with duties and powers as the council determines necessary for the performance of the functions of such offices.

(5) The council may establish such advisory and technical committees as it considers necessary to aid and advise the council in the performance of its functions. The committees may be continuing or temporary committees. The council shall determine the representation, membership, terms and organization of the committees and shall appoint committee members.

(6) A majority of the members of the council shall constitute a quorum for the transaction of business.

(7) Members of the council are not entitled to compensation, but at the discretion of the Director of [Human Services] **the Oregon Health Authority** may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties, subject to ORS 292.495.

(8) The council may accept contributions of funds and assistance from the United States Government or its agencies or from any other source, public or private, for purposes consistent with the purposes of the council.

(9) The [Department of Human Services] **Oregon Health Authority** shall provide the council with such services and employees as the council requires to carry out its duties.

SECTION 254. ORS 409.621 is amended to read:

409.621. The Oregon Council on Health Care Interpreters shall work in cooperation with the [Department of Human Services] **Oregon Health Authority** to:

(1) Develop testing, qualification and certification standards for health care interpreters for persons with limited English proficiency.

(2) Coordinate with other states to develop and implement educational and testing programs for health care interpreters.

(3) Examine operational and funding issues, including but not limited to the feasibility of developing a central registry and annual subscription mechanism for health care interpreters.

(4) Do all other acts as shall be necessary or appropriate under the provisions of ORS 409.615 to 409.623.

SECTION 255. ORS 409.623 is amended to read:

409.623. (1) In consultation with the Oregon Council on Health Care Interpreters, the [Department of Human Services] **Oregon Health Authority** shall by rule establish procedures for testing, qualification and certification of health care interpreters for persons with limited English proficiency, including but not limited to:

(a) Minimum standards for qualification and certification as a health care interpreter, including:

(A) Oral and written language skills in English and in the language for which health care interpreter qualification or certification is granted; and

(B) Formal education or training in medical terminology, anatomy and physiology, and medical ethics;

(b) Categories of expertise of health care interpreters based on the English and non-English skills and the medical terminology skills of the person seeking qualification or certification;

(c) Procedures for receiving applications and for examining applicants for qualification or certification;

(d) The content and administration of required examinations;

(e) The requirements and procedures for reciprocity of qualification and certification for health care interpreters qualified or certified in another state or territory of the United States; and

(f) Fees for application, examination, initial issuance, renewal and reciprocal acceptance of qualification or certification as a health care interpreter and for other fees deemed necessary by the [department] **authority**.

(2) Any person seeking qualification or certification as a health care interpreter must submit an application to the [department] **authority**. If the applicant meets the requirements for qualification or certification established by the [department] **authority** under this section, the [department] **authority** shall issue an annual certificate of qualification or a certification to the health care interpreter. The [department] **authority** shall collect a fee for the issuance of the certificate of qualification or the certification and for any required examinations in the amount established pursuant to subsection (1) of this section.

(3) The [department] **authority** shall work with other states to develop educational and testing programs and procedures for the qualification and certification of health care interpreters.

(4) In addition to the requirements for qualification established under subsection (1) of this section, a person may be qualified as a health care interpreter only if the person:

(a) Is able to fluently interpret or translate the dialect, slang or specialized vocabulary of the non-English language for which qualification is sought;

(b) Has had at least 60 hours of health care interpreter training that includes anatomy and physiology and concepts of medical interpretation; and

(c) Has had practical experience as an intern with a practicing health care interpreter.

(5) A person may not use the title of “qualified health care interpreter” unless the person has met the requirements for qualification established under subsections (1) and (4) of this section and has been issued a valid certificate of qualification by the [department] **authority**.

(6) In addition to the requirements for certification established under subsection (1) of this section, a person may be certified as a health care interpreter only if:

(a) The person has met all the requirements established under subsection (4) of this section; and

(b) The person has passed written and oral examinations required by the [department] **authority** in English, in the non-English language the person wishes to translate and in medical terminology.

(7) A person may not use the title of “certified health care interpreter” unless the person has met the requirements for certification established under subsections (1) and (6) of this section and has been issued a valid certification by the [department] **authority**.

SECTION 256. ORS 409.625 is amended to read:

409.625. All moneys received by the Oregon Council on Health Care Interpreters under ORS 409.615 to 409.625 shall be paid into the [*General Fund in the State Treasury and placed to the credit of the Department of Human Services Account*] **Oregon Health Authority Fund and credited to an account designated by the authority**. Such moneys [*are appropriated continuously to the department and*] shall be used only for the administration and enforcement of the provisions of ORS 409.615 to 409.625.

SECTION 257. ORS 409.720 is amended to read:

409.720. (1) As used in this section:

(a) “Adult foster home” has the meaning given that term in ORS 443.705 (1).

(b) “Health care facility” has the meaning given that term in ORS 442.015 [(16)].

(c) “Residential facility” has the meaning given that term in ORS 443.400 (6).

(2) Every adult foster home, health care facility and residential facility licensed or registered by the Department of Human Services shall:

(a) Adopt a plan to provide for the safety of persons who are receiving care at or are residents of the home or facility in the event of an emergency that requires immediate action by the staff of the home or facility due to conditions of imminent danger that pose a threat to the life, health or safety of persons who are receiving care at or are residents of the home or facility; and

(b) Provide training to all employees of the home or facility about the responsibilities of the employees to implement the plan required by this section.

(3) The department shall adopt by rule the requirements for the plan and training required by this section. The rules adopted shall include, but are not limited to, procedures for the evacuation of the persons who are receiving care at or are residents of the adult foster home, health care facility or residential facility to a place of safety when the conditions of imminent danger require relocation of those persons.

SECTION 258. ORS 409.740 is amended to read:

409.740. The [*Department of Human Services*] **Oregon Health Authority**, in consultation with the appropriate professional and trade associations and licensing boards, shall inform retired physicians and health care providers regarding ORS 30.302 and 30.792.

SECTION 259. ORS 409.745 is amended to read:

409.745. (1) The Physician Visa Waiver Program is established in the [*Department of Human Services*] **Oregon Health Authority**. The purpose of the program is to make recommendations to the United States Department of State for a waiver of the foreign country residency requirement on behalf of foreign physicians holding visas who seek employment in federally designated shortage areas.

(2) A foreign physician who has completed a residency in the United States may apply to the [*Department of Human Services*] **authority** for a recommendation for a waiver of the foreign country residency requirement in order to obtain employment in a federally designated shortage area in the state. Applications shall be on the forms of and contain the information requested by the [*department*] **authority**. Each application shall be accompanied by the application fee.

(3) The [*department*] **authority** reserves the right to recommend or decline to recommend any request for a waiver.

(4) The [*department*] **authority** shall adopt rules necessary to implement and administer the program, including but not limited to adopting an application fee not to exceed the cost of administering the program.

SECTION 260. ORS 409.747 is amended to read:

409.747. Notwithstanding ORS 411.760 [*and 414.095*], liquidated and delinquent debts owed to the Department of Human Services may be set off against amounts owed by the department to the debtors.

NOTE: Section 261 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 262. ORS 411.620 is amended to read:

411.620. (1) The Department of Human Services may prosecute a civil suit or action against any person who has obtained, for personal benefit or for the benefit of any other person, any amount or type of general assistance or public assistance, as defined in ORS 411.010, or has aided any other person to obtain such general assistance or public assistance, in violation of any provision of ORS 411.630, or in violation of ORS 411.640. In such suit or action the department may recover the amount or value of such general assistance or public assistance so obtained in violation of ORS 411.630, or in violation of ORS 411.640, with interest thereon, together with costs and disbursements incurred therein.

(2) Excepting as to bona fide purchasers for value, the department, **the Oregon Health Authority**, the conservator for the recipient or the personal representative of the estate of a deceased recipient may prosecute a civil suit or action to set aside the transfer, gift or other disposition of any money or property made in violation of any provisions of ORS 411.630, 411.708 and 414.105 and the department **or the authority** may recover out of such money or property, or otherwise, the amount or value of any general assistance or public assistance obtained as a result of such violation, with interest thereon, together with costs and disbursements incurred therein.

SECTION 263. ORS 411.708 is amended to read:

411.708. (1) The amount of any assistance paid under ORS 411.706 is a claim against the property or interest in the property belonging to and a part of the estate of any deceased recipient. If the deceased recipient has no estate, the estate of the surviving spouse of the deceased recipient, if any, shall be charged for assistance granted under ORS 411.706 to the deceased recipient or the surviving spouse. There shall be no adjustment or recovery of assistance correctly paid on behalf of any deceased recipient under ORS 411.706 except after the death of the surviving spouse of the deceased recipient, if any, and only at a time when the deceased recipient has no surviving child who is under 21 years of age or who is blind or has a disability. Transfers of real or personal property by recipients of assistance without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(2) Except when there is a surviving spouse, or a surviving child who is under 21 years of age or who is blind or has a disability, the amount of any assistance paid under ORS 411.706 is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) A claim under this section shall exclude benefits paid to or on behalf of a beneficiary under a policy of qualified long term care insurance, as defined in ORS 414.025 [(2)(s)] **(2)(t)**.

(4) Nothing in this section authorizes the recovery of the amount of any assistance from the estate or surviving spouse of a recipient to the extent that the need for assistance resulted from a crime committed against the recipient.

SECTION 264. ORS 414.025, as amended by section 18a, chapter 861, Oregon Laws 2007, is amended to read:

414.025. As used in this chapter, unless the context or a specially applicable statutory definition requires otherwise:

(1) "Category of aid" means assistance provided by the Oregon Supplemental Income Program, aid granted under ORS 412.001 to 412.069 and 418.647 or federal Supplemental Security Income payments.

(2) "Categorically needy" means, insofar as funds are available for the category, a person who is a resident of this state and who:

(a) Is receiving a category of aid.

(b) Would be eligible for[,] **a category of aid** but is not receiving a category of aid.

(c) Is in a medical facility and, if the person left such facility, would be eligible for a category of aid.

(d) Is under the age of 21 years and would be a dependent child as defined in ORS 412.001 except for age and regular attendance in school or in a course of professional or technical training.

(e)(A) Is a caretaker relative, as defined in ORS 412.001, who cares for a child who would be a dependent child except for age and regular attendance in school or in a course of professional or technical training; or

(B) Is the spouse of the caretaker relative.

(f) Is under the age of 21 years, is in a foster family home or licensed child-caring agency or institution under a purchase of care agreement and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(g) Is a spouse of an individual receiving a category of aid and who is living with the recipient of a category of aid, whose needs and income are taken into account in determining the cash needs of the recipient of a category of aid, and who is determined by the Department of Human Services to be essential to the well-being of the recipient of a category of aid.

(h) Is a caretaker relative as defined in ORS 412.001 who cares for a dependent child receiving aid granted under ORS 412.001 to 412.069 and 418.647 or is the spouse of the caretaker relative.

(i) Is under the age of 21 years, is in a youth care center and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(j) Is under the age of 21 years and is in an intermediate care facility which includes institutions for persons with mental retardation[; or].

(k) Is under the age of 22 years and is in a psychiatric hospital.

[(k)] (L) Is under the age of 21 years and is in an independent living situation with all or part of the maintenance cost paid by the Department of Human Services.

[(L)] (m) Is a member of a family that received aid in the preceding month under ORS 412.006 or 412.014 and became ineligible for aid due to increased hours of or increased income from employment. As long as the member of the family is employed, such families will continue to be eligible for medical assistance for a period of at least six calendar months beginning with the month in which such family became ineligible for assistance due to increased hours of employment or increased earnings.

[(m)] (n) Is an adopted person under 21 years of age for whom a public agency is assuming financial responsibility in whole or in part.

[(n)] (o) Is an individual or is a member of a group who is required by federal law to be included in the state's medical assistance program in order for that program to qualify for federal funds.

[(o)] (p) Is an individual or member of a group who, subject to the rules of the department [*and within available funds*], may optionally be included in the state's medical assistance program under federal law and regulations concerning the availability of federal funds for the expenses of that individual or group.

[(p)] (q) Is a pregnant woman who would be eligible for aid granted under ORS 412.001 to 412.069 and 418.647, whether or not the woman is eligible for cash assistance.

[(q)] (r) Except as otherwise provided in this section [*and to the extent of available funds*], is a pregnant woman or child for whom federal financial participation is available under [*Title XIX*] **Title XIX or XXI** of the federal Social Security Act.

[(r)] (s) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the federal Social Security Act or is not a full-time student in a post-secondary education program as defined by the Department of Human Services by rule, but whose family income is less than the federal poverty level and whose family investments and savings equal less than the investments and savings limit established by the department by rule.

[(s)] (t) Would be eligible for a category of aid but for the receipt of qualified long term care insurance benefits under a policy or certificate issued on or after January 1, 2008. As used in this paragraph, "qualified long term care insurance" means a policy or certificate of insurance as defined in ORS 743.652 (6).

(3) "Income" has the meaning given that term in ORS 411.704.

(4) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable instruments as defined in ORS 73.0104 and such similar investments or savings as the Department of Human Services may establish by rule that are available to the applicant or recipient to contribute toward meeting the needs of the applicant or recipient.

(5) "Medical assistance" means so much of the following medical and remedial care and services as may be prescribed by the [*Department of Human Services*] **Oregon Health Authority** according to the standards established pursuant to [*ORS 414.065*] **section 10 of this 2009 Act**, including payments made for services provided under an insurance or other contractual arrangement and money paid directly to the recipient for the purchase of medical care:

- (a) Inpatient hospital services, other than services in an institution for mental diseases;
- (b) Outpatient hospital services;
- (c) Other laboratory and X-ray services;
- (d) Skilled nursing facility services, other than services in an institution for mental diseases;
- (e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere;
- (f) Medical care, or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
- (g) Home health care services;
- (h) Private duty nursing services;
- (i) Clinic services;
- (j) Dental services;

- (k) Physical therapy and related services;
- (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter 689;
- (m) Dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
- (n) Other diagnostic, screening, preventive and rehabilitative services;
- (o) Inpatient hospital services, skilled nursing facility services and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;
- (p) Any other medical care, and any other type of remedial care recognized under state law;
- (q) Periodic screening and diagnosis of individuals under the age of 21 years to ascertain their physical or mental impairments, and such health care, treatment and other measures to correct or ameliorate impairments and chronic conditions discovered thereby;
- (r) Inpatient hospital services for individuals under 22 years of age in an institution for mental diseases; and
- (s) Hospice services.

(6) "Medical assistance" includes any care or services for any individual who is a patient in a medical institution or any care or services for any individual who has attained 65 years of age or is under 22 years of age, and who is a patient in a private or public institution for mental diseases. "Medical assistance" includes "health services" as defined in ORS 414.705. "Medical assistance" does not include care or services for an inmate in a nonmedical public institution.

(7) "Medically needy" means a person who is a resident of this state and who is considered eligible under federal law for medically needy assistance.

(8) "Resources" has the meaning given that term in ORS 411.704. For eligibility purposes, "resources" does not include charitable contributions raised by a community to assist with medical expenses.

SECTION 265. ORS 414.033 is amended to read:

414.033. The [Department of Human Services] **Oregon Health Authority** may:

(1) Subject to the allotment system provided for in ORS 291.234 to 291.260, expend such sums as are required to be expended in this state to provide medical assistance. Expenditures for medical assistance include, but are not limited to, expenditures for deductions, cost sharing, enrollment fees, premiums or similar charges imposed with respect to hospital insurance benefits or supplementary health insurance benefits, as established by federal law.

(2) Enter into agreements with, join with or accept grants from, the federal government for cooperative research and demonstration projects for public welfare purposes, including, but not limited to, any project which determines the cost of providing medical assistance to the medically needy and evaluates service delivery systems.

SECTION 266. ORS 414.034 is amended to read:

414.034. The [Department of Human Services] **Oregon Health Authority** shall accept federal Centers for Medicare and Medicaid Services billing, reimbursement and reporting forms instead of department billing, reimbursement and reporting forms if the federal forms contain substantially the same information as required by the department forms.

SECTION 267. ORS 414.105 and 414.106 are added to and made a part of ORS chapter 416.

SECTION 268. ORS 414.042 is added to and made a part of ORS chapter 411.

SECTION 269. ORS 414.042 is amended to read:

414.042. [(1) *The need for and the amount of medical assistance to be made available for each eligible group of recipients of medical assistance shall be determined, in accordance with the rules of the Department of Human Services, taking into account:*]

[(a) *The requirements and needs of the person, the spouse and other dependents;*]

[(b) *The income, resources and maintenance available to the person but, except as provided in ORS 414.025 (2)(r), resources shall be disregarded for those eligible by reason of having income below the federal poverty level and who are eligible for medical assistance only because of the enactment of chapter 836, Oregon Laws 1989;*]

[(c) The responsibility of the spouse and, with respect to a person who is blind or is permanently and totally disabled or is under 21 years of age, the responsibility of the parents; and]

[(d) The report of the Health Services Commission as funded by the Legislative Assembly and such other programs as the Legislative Assembly may authorize. However, medical assistance, including health services, shall not be provided to persons described in ORS 414.025 (2)(r) unless the Legislative Assembly specifically appropriates funds to provide such assistance.]

[(2) Such amounts of income and resources may be disregarded as the department may prescribe by rules, except that the department may not require any needy person over 65 years of age, as a condition of entering or remaining in a hospital, nursing home or other congregate care facility, to sell any real property normally used as such person's home. Any rule of the department inconsistent with this section is to that extent invalid. The amounts to be disregarded shall be within the limits required or permitted by federal law, rules or orders applicable thereto.]

[(3) In the determination of the amount of medical assistance available to a medically needy person, all income and resources available to the person in excess of the amounts prescribed in ORS 414.038, within limits prescribed by the department, shall be applied first to costs of needed medical and remedial care and services not available under the medical assistance program and then to the costs of benefits under the medical assistance program.]

(1) The Department of Human Services shall determine eligibility for medical assistance according to criteria prescribed by rule, taking into account:

(a) The requirements and needs of the applicant and of the spouse and dependents of the applicant;

(b) The income, resources and maintenance available to the applicant; and

(c) The responsibility of the spouse of the applicant and, with respect to an applicant who is blind or is permanently and totally disabled or is under 21 years of age, the responsibility of the parents.

(2) Rules adopted by the department under subsection (1) of this section:

(a) Shall disregard resources for those who are eligible for medical assistance only by reason of ORS 414.025 (2)(s), except for the resources described in ORS 414.025 (2)(s).

(b) May disregard income and resources within the limits required or permitted by federal law, regulations or orders.

(3) The department may not require any needy person over 65 years of age, as a condition of entering or remaining in a hospital, nursing home or other congregate care facility, to sell any real property normally used as such person's home. Any rule of the department inconsistent with this section is to that extent invalid.

SECTION 270. ORS 414.047, 414.049, 414.051, 414.055, 414.057, 414.073, 414.151, 414.420, 414.422 and 414.424 are added to and made a part of ORS chapter 411.

NOTE: Section 271 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 272. ORS 414.049 is amended to read:

414.049. For each person applying for *[health services under ORS 414.705 to 414.750]* **medical assistance**, the Department of Human Services shall fully document:

(1) The category of aid as defined in ORS 414.025 that makes the person eligible for medical assistance or the way in which the person qualifies as categorically needy as defined in ORS 414.025;

(2) The status of the person as a resident of this state; and

(3) The financial income and resources of the person.

SECTION 273. ORS 414.051 is amended to read:

414.051. The *[Department of Human Services]* **Oregon Health Authority** shall approve or deny prior authorization requests for dental services not later than 30 days after submission thereof by the provider, and shall make payments to providers of prior authorized dental services not later than 30 days after receipt of the invoice of the provider.

NOTE: Sections 274 and 275 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 276. ORS 414.065 is amended to read:

414.065. (1)(a) With respect to medical and remedial care and services to be provided in medical assistance during any period, and within the limits of funds available therefor, the [*Department of Human Services*] **Oregon Health Authority** shall determine, subject to such revisions as it may make from time to time and with respect to the "health services" defined in ORS 414.705, subject to legislative funding in response to the report of the Health Services Commission and paragraph (b) of this subsection:

(A) The types and extent of medical and remedial care and services to be provided to each eligible group of recipients of medical assistance.

(B) Standards to be observed in the provision of medical and remedial care and services.

(C) The number of days of medical and remedial care and services toward the cost of which public assistance funds will be expended in the care of any person.

(D) Reasonable fees, charges and daily rates to which public assistance funds will be applied toward meeting the costs of providing medical and remedial care and services to an applicant or recipient.

(E) Reasonable fees for professional medical and dental services which may be based on usual and customary fees in the locality for similar services.

(F) The amount and application of any copayment or other similar cost-sharing payment that the [*department*] **authority** may require a recipient to pay toward the cost of medical and remedial care or services.

(b) Notwithstanding ORS 414.720 (8), the [*department*] **authority** shall adopt rules establishing timelines for payment of health services under paragraph (a) of this subsection.

(2) The types and extent of medical and remedial care and services and the amounts to be paid in meeting the costs thereof, as determined and fixed by the [*department*] **authority** and within the limits of funds available therefor, shall be the total available for medical assistance and payments for such medical assistance shall be the total amounts from public assistance funds available to providers of medical and remedial care and services in meeting the costs thereof.

(3) Except for payments under a cost-sharing plan, payments made by the [*department*] **authority** for medical assistance shall constitute payment in full for all medical and remedial care and services for which such payments of medical assistance were made.

(4) Medical benefits, standards and limits established pursuant to subsection (1)(a)(A), (B) and (C) of this section for the eligible medically needy, except for persons receiving assistance under ORS 411.706, may be less than but may not exceed medical benefits, standards and limits established for the eligible categorically needy, except that, in the case of a research and demonstration project entered into under ORS 411.135, medical benefits, standards and limits for the eligible medically needy may exceed those established for specific eligible groups of the categorically needy.

SECTION 277. ORS 414.073 is amended to read:

414.073. When giving information concerning medical assistance, the [*Department of Human Services*] **Oregon Health Authority** shall make available to applicants or recipients materials which include at least a listing of all the healing arts licensed in this state.

SECTION 278. ORS 414.105 is amended to read:

414.105. (1) The [*Department of Human Services*] **Oregon Health Authority** may recover from any person the amounts of medical assistance incorrectly paid on behalf of such person.

(2) Medical assistance pursuant to this chapter paid on behalf of an individual who was 55 years of age or older when the individual received such assistance, or paid on behalf of a person of any age who was a permanently institutionalized inpatient in a nursing facility, intermediate care facility for persons with mental retardation or other medical institution, may be recovered from the estate of the individual or from any recipient of property or other assets held by the individual at the time of death including the estate of the surviving spouse. Claim for such medical assistance correctly paid to the individual may be established against the estate, but there shall be no adjustment or recovery thereof until after the death of the surviving spouse, if any, and only at a time when the individual has no surviving child who is under 21 years of age or who is blind or permanently

and totally disabled. Transfers of real or personal property by recipients of such aid without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(4) In any action or proceeding under this section to recover medical assistance paid, it shall be the legal burden of the person who receives the property or other assets from a Medicaid recipient to establish the extent and value of the Medicaid recipient's legal title or interest in the property or assets in accordance with rules established by the [department] **authority**.

(5) As used in this section, "estate" includes all real and personal property and other assets in which the deceased individual had any legal title or interest at the time of death including assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other similar arrangement.

SECTION 279. ORS 414.106 is amended to read:

414.106. (1) Subject to the requirements of subsection (2) of this section, if 42 U.S.C. 1396p (b)(1)(B) as in effect on January 1, 1995, is repealed without replacement or is declared unconstitutional, the Director of [Human Services] **the Oregon Health Authority** shall limit the recovery of medical assistance paid pursuant to ORS chapter 414 from the estate of an individual or a recipient of property or other assets held by an individual at the time of death, including a surviving spouse of the individual, to the recovery of medical assistance payments paid on behalf of the individual on or after the date that the individual attained 65 years of age.

(2) The director shall limit the recovery of medical assistance as described under subsection (1) of this section only if the director determines, after receiving the written opinion of the Attorney General, that the recovery limitation will not violate any federal law in effect on the operative date of the recovery limitation. The director may condition, limit, modify or terminate any recovery limitation as the director considers necessary to avoid a violation of federal law.

SECTION 280. ORS 414.109 is amended to read:

414.109. (1) The Oregon Health Plan Fund is established, separate and distinct from the General Fund. Interest earned by the Oregon Health Plan Fund shall be retained by the Oregon Health Plan Fund.

(2) Moneys in the Oregon Health Plan Fund are continuously appropriated to the Department of Human Services for the purposes of funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan and funding the maintenance of the benefits available under the Oregon Health Plan.

(3) On the effective date of this 2009 Act, all moneys in the Oregon Health Plan Fund shall be transferred to the Oregon Health Authority Fund established in section 19 of this 2009 Act.

SECTION 281. ORS 414.115 is amended to read:

414.115. (1) In lieu of providing one or more of the medical and remedial care and services available under medical assistance by direct payments to providers thereof and in lieu of providing such medical and remedial care and services made available pursuant to ORS 414.065, the [Department of Human Services] **Oregon Health Authority** shall use available medical assistance funds to purchase and pay premiums on policies of insurance, or enter into and pay the expenses on health care service contracts, or medical or hospital service contracts that provide one or more of the medical and remedial care and services available under medical assistance for the benefit of the categorically needy [or the medically needy, or both]. Notwithstanding other specific provisions, the use of available medical assistance funds to purchase medical or remedial care and services may provide the following insurance or contract options:

(a) Differing services or levels of service among groups of eligibles as defined by rules of the [department] **authority**; and

(b) Services and reimbursement for these services may vary among contracts and need not be uniform.

(2) The policy of insurance or the contract by its terms, or the insurer or contractor by written acknowledgment to the [department] **authority** must guarantee:

(a) To provide medical and remedial care and services of the type, within the extent and according to standards prescribed under ORS 414.065;

(b) To pay providers of medical and remedial care and services the amount due, based on the number of days of care and the fees, charges and costs established under ORS 414.065, except as to medical or hospital service contracts which employ a method of accounting or payment on other than a fee-for-service basis;

(c) To provide medical and remedial care and services under policies of insurance or contracts in compliance with all laws, rules and regulations applicable thereto; and

(d) To provide such statistical data, records and reports relating to the provision, administration and costs of providing medical and remedial care and services to the [department] **authority** as may be required by the [department] **authority** for its records, reports and audits.

SECTION 282. ORS 414.125 is amended to read:

414.125. (1) Any payment of available medical assistance funds for policies of insurance or service contracts shall be according to such uniform area-wide rates as the [Department of Human Services] **Oregon Health Authority** shall have established and which it may revise from time to time as may be necessary or practical, except that, in the case of a research and demonstration project entered into under ORS 411.135 special rates may be established.

(2) No premium or other periodic charge on any policy of insurance, health care service contract, or medical or hospital service contract shall be paid from available medical assistance funds unless the insurer or contractor issuing such policy or contract is by law authorized to transact business as an insurance company, health care service contractor or hospital association in this state.

SECTION 283. ORS 414.135 is amended to read:

414.135. The [Department of Human Services] **Oregon Health Authority** may enter into nonexclusive contracts under which funds available for medical assistance may be administered and disbursed by the contractor to direct providers of medical and remedial care and services available under medical assistance in consideration of services rendered and supplies furnished by them in accordance with the provisions of this chapter. Payment shall be made according to the rules of the [department] **authority** pursuant to the number of days and the fees, charges and costs established under ORS 414.065. The contractor must guarantee the [department] **authority** by written acknowledgment:

(1) To make all payments under this chapter promptly but not later than 30 days after receipt of the proper evidence establishing the validity of the provider's claim.

(2) To provide such data, records and reports to the [department] **authority** as may be required by the [department] **authority**.

SECTION 284. ORS 414.145 is amended to read:

414.145. (1) The provisions of ORS 414.115, 414.125 or 414.135 shall be implemented whenever it appears to the [Department of Human Services] **Oregon Health Authority** that such implementation will provide comparable benefits at equal or less cost than provision thereof by direct payments by the [department] **authority** to the providers of medical assistance, but in no case greater than the legislatively approved budgeted cost per eligible recipient at the time of contracting.

(2) When determining comparable benefits at equal or less cost as provided in subsection (1) of this section, the [department] **authority** must take into consideration the recipients' need for reasonable access to preventive and remedial care, and the contractor's ability to assure continuous quality delivery of both routine and emergency services.

SECTION 285. ORS 414.151 is amended to read:

414.151. The [Department of Human Services] **Oregon Health Authority** shall endeavor to develop agreements with local governments to facilitate the enrollment of poverty level medical assistance program clients. Subject to the availability of funds therefor, the agreement shall be

structured to allow flexibility by the state and local governments and may allow any of the following options for enrolling clients in poverty level medical assistance programs:

(1) Initial processing shall be done at the county health department by employees of the county, with eligibility determination completed at the local office of the [*Department of Human Services*] **authority**;

(2) Initial processing and eligibility determination shall be done at the county health department by employees of the local health department; or

(3) Application forms shall be made available at the county health department with initial processing and eligibility determination shall be done at the local office of the [*Department of Human Services*] **authority**.

SECTION 286. ORS 414.153 is amended to read:

414.153. In order to make advantageous use of the system of public health services available through county health departments and other publicly supported programs and to insure access to public health services through contract under ORS chapter 414, the state shall:

(1) Unless cause can be shown why such an agreement is not feasible, require and approve agreements between prepaid health plans and publicly funded providers for authorization of payment for point of contact services in the following categories:

(a) Immunizations;

(b) Sexually transmitted diseases; and

(c) Other communicable diseases;

(2) Allow enrollees in prepaid health plans to receive from fee-for-service providers:

(a) Family planning services;

(b) Human immunodeficiency virus and acquired immune deficiency syndrome prevention services; and

(c) Maternity case management if the [*Department of Human Services*] **Oregon Health Authority** determines that a prepaid plan cannot adequately provide the services;

(3) Encourage and approve agreements between prepaid health plans and publicly funded providers for authorization of and payment for services in the following categories:

(a) Maternity case management;

(b) Well-child care;

(c) Prenatal care;

(d) School-based clinics;

(e) Health services for children provided through schools and Head Start programs; and

(f) Screening services to provide early detection of health care problems among low income women and children, migrant workers and other special population groups; and

(4) Recognize the social value of partnerships between county health departments and other publicly supported programs and other health providers, and take appropriate measures to involve publicly supported health care and service programs in the development and implementation of managed health care programs in their areas of responsibility.

SECTION 287. ORS 414.211 is amended to read:

414.211. (1) There is established a Medicaid Advisory Committee consisting of not more than 15 members appointed by the Governor.

(2) The committee shall be composed of:

(a) A physician licensed under ORS chapter 677;

(b) Two members of health care consumer groups that include Medicaid recipients;

(c) Two Medicaid recipients, one of whom shall be a person with a disability;

(d) The Director of [*Human Services*] **the Oregon Health Authority** or designee;

(e) Health care providers;

(f) Persons associated with health care organizations, including but not limited to managed care plans under contract to the Medicaid program; and

(g) Members of the general public.

(3) In making appointments, the Governor shall consult with appropriate professional and other interested organizations. All members appointed to the committee shall be familiar with the medical needs of low income persons.

(4) The term of office for each member shall be two years, but each member shall serve at the pleasure of the Governor.

(5) Members of the committee shall receive no compensation for their services but, subject to any applicable state law, shall be allowed actual and necessary travel expenses incurred in the performance of their duties from the *[Public Welfare Account]* **Oregon Health Authority Fund**.

SECTION 288. ORS 414.221 is amended to read:

414.221. The Medicaid Advisory Committee shall advise the Administrator of the Office for Oregon Health Policy and Research and the Director of *[Human Services]* **the Oregon Health Authority** on:

(1) Medical care, including mental health and alcohol and drug treatment and remedial care to be provided under ORS chapter 414; and

(2) The operation and administration of programs provided under ORS chapter 414.

SECTION 289. ORS 414.225 is amended to read:

414.225. The *[Department of Human Services]* **Oregon Health Authority** shall consult with the Medicaid Advisory Committee concerning the determinations required under ORS 414.065.

SECTION 290. ORS 414.227 is amended to read:

414.227. (1) ORS 192.610 to 192.690 apply to any meeting of an advisory committee with the authority to make decisions for, conduct policy research for or make recommendations to the *[Department of Human Services]* **Oregon Health Authority or the Oregon Health Policy Board** on administration or policy related to the medical assistance program operated under this chapter.

(2) Subsection (1) of this section applies only to advisory committee meetings attended by two or more advisory committee members who are not employed by a public body.

SECTION 291. ORS 414.312 is amended to read:

414.312. (1) As used in ORS 414.312 to 414.318:

(a) "Pharmacy benefit manager" means an entity that, in addition to being a prescription drug claims processor, negotiates and executes contracts with pharmacies, manages preferred drug lists, negotiates rebates with prescription drug manufacturers and serves as an intermediary between the Oregon Prescription Drug Program, prescription drug manufacturers and pharmacies.

(b) "Prescription drug claims processor" means an entity that processes and pays prescription drug claims, adjudicates pharmacy claims, transmits prescription drug prices and claims data between pharmacies and the Oregon Prescription Drug Program and processes related payments to pharmacies.

(c) "Program price" means the reimbursement rates and prescription drug prices established by the administrator of the Oregon Prescription Drug Program.

(2) The Oregon Prescription Drug Program is established in the *[Department of Human Services]* **Oregon Health Authority**. The purpose of the program is to:

(a) Purchase prescription drugs or reimburse pharmacies for prescription drugs in order to receive discounted prices and rebates;

(b) Make prescription drugs available at the lowest possible cost to participants in the program; and

(c) Maintain a list of prescription drugs recommended as the most effective prescription drugs available at the best possible prices.

(3) The Director of *[Human Services]* **the Oregon Health Authority** shall appoint an administrator of the Oregon Prescription Drug Program. The administrator shall:

(a) Negotiate price discounts and rebates on prescription drugs with prescription drug manufacturers;

(b) Purchase prescription drugs on behalf of individuals and entities that participate in the program;

- (c) Contract with a prescription drug claims processor to adjudicate pharmacy claims and transmit program prices to pharmacies;
 - (d) Determine program prices and reimburse pharmacies for prescription drugs;
 - (e) Adopt and implement a preferred drug list for the program;
 - (f) Develop a system for allocating and distributing the operational costs of the program and any rebates obtained to participants of the program; and
 - (g) Cooperate with other states or regional consortia in the bulk purchase of prescription drugs.
- (4) The following individuals or entities may participate in the program:
- (a) Public Employees' Benefit Board;
 - (b) Local governments as defined in ORS 174.116 and special government bodies as defined in ORS 174.117 that directly or indirectly purchase prescription drugs;
 - [(c) *Enrollees in the Senior Prescription Drug Assistance Program created under ORS 414.342;*]
 - [(d)] (e) Oregon Health and Science University established under ORS 353.020;
 - [(e)] (d) State agencies that directly or indirectly purchase prescription drugs, including agencies that dispense prescription drugs directly to persons in state-operated facilities;
 - [(f)] (e) Residents of this state who lack or are underinsured for prescription drug coverage;
 - [(g)] (f) Private entities; and
 - [(h)] (g) Labor organizations.
- (5) The state agency that receives federal Medicaid funds and is responsible for implementing the state's medical assistance program may not participate in the program.
- (6) The administrator may establish different reimbursement rates or prescription drug prices for pharmacies in rural areas to maintain statewide access to the program.
- (7) The administrator shall establish the terms and conditions for a pharmacy to enroll in the program. A licensed pharmacy that is willing to accept the terms and conditions established by the administrator may apply to enroll in the program.
- (8) Except as provided in subsection [(9)] (10) of this section, the administrator may not:
- (a) Contract with a pharmacy benefit manager;
 - (b) Establish a state-managed wholesale or retail drug distribution or dispensing system; or
 - (c) Require pharmacies to maintain or allocate separate inventories for prescription drugs dispensed through the program.
- (9) The administrator shall contract with one or more entities to provide the functions of a prescription drug claims processor. The administrator may also contract with a pharmacy benefit manager to negotiate with prescription drug manufacturers on behalf of the administrator.
- (10) Notwithstanding subsection [(4)(f)] (4)(e) of this section, individuals who are eligible for Medicare Part D prescription drug coverage may participate in the program.

SECTION 292. ORS 414.314 is amended to read:

414.314. (1) An individual or entity described in ORS 414.312 (4) may apply to participate in the Oregon Prescription Drug Program. Participants shall apply on an application provided by the [Department of Human Services] **Oregon Health Authority**. The [department] **authority** may charge participants a nominal fee to participate in the program. The [department] **authority** shall issue a prescription drug identification card to participants of the program.

(2) The [department] **authority** shall provide a mechanism to calculate and transmit the program prices for prescription drugs to a pharmacy. The pharmacy shall charge the participant the program price for a prescription drug.

(3) A pharmacy may charge the participant the professional dispensing fee set by the [department] **authority**.

(4) Prescription drug identification cards issued under this section must contain the information necessary for proper claims adjudication or transmission of price data.

SECTION 293. ORS 414.316 is amended to read:

414.316. The Office for Oregon Health Policy and Research shall develop and recommend to the [Department of Human Services] **Oregon Health Authority** a preferred drug list that identifies preferred choices of prescription drugs within therapeutic classes for particular diseases and con-

ditions, including generic alternatives, for use in the Oregon Prescription Drug Program. The office shall conduct public hearings and use evidence-based evaluations on the effectiveness of similar prescription drugs to develop the preferred drug list.

SECTION 294. ORS 414.318 is amended to read:

414.318. The Prescription Drug Purchasing Fund is established separate and distinct from the General Fund. The Prescription Drug Purchasing Fund shall consist of moneys appropriated to the fund by the Legislative Assembly and moneys received by the [*Department of Human Services*] **Oregon Health Authority** for the purposes established in this section in the form of gifts, grants, bequests, endowments or donations. The moneys in the Prescription Drug Purchasing Fund are continuously appropriated to the [*department*] **authority** and shall be used to purchase prescription drugs, reimburse pharmacies for prescription drugs and reimburse the [*department*] **authority** for the costs of administering the Oregon Prescription Drug Program, including contracted services costs, computer costs, professional dispensing fees paid to retail pharmacies and other reasonable program costs. Interest earned on the fund shall be credited to the fund.

SECTION 295. ORS 414.320 is amended to read:

414.320. The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules to implement and administer ORS 414.312 to 414.318. The rules shall include but are not limited to establishing procedures for:

(1) Issuing prescription drug identification cards to individuals and entities that participate in the Oregon Prescription Drug Program; and
(2) Enrolling pharmacies in the program.

SECTION 296. ORS 414.325 is amended to read:

414.325. (1) As used in this section, "legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to rules of the [*Department of Human Services*] **Oregon Health Authority** unless the practitioner prescribes otherwise and an exception is granted by the [*department*] **authority**.

(3) Except as provided in subsections (4) and (5) of this section, the [*department*] **authority** shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the [*department*] **authority** shall pay only for drugs in the generic form unless an exception has been granted by the [*department*] **authority**.

(4) Notwithstanding subsection (3) of this section, an exception must be applied for and granted before the [*department*] **authority** is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the [*department*] **authority**.

(5)(a) Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection, the [*department*] **authority** is authorized to:

(A) Withhold payment for a legend drug when federal financial participation is not available; and

(B) Require prior authorization of payment for drugs that the [*department*] **authority** has determined should be limited to those conditions generally recognized as appropriate by the medical profession.

(b) The [*department*] **authority** may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the [*department*] **authority**, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:

- (A) Asthma;
- (B) Sinusitis;
- (C) Rhinitis; or
- (D) Allergies.

(6)(a) The [department] **authority** shall pay a rural health clinic for a legend drug prescribed and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent medical condition if:

(A) There is not a pharmacy within 15 miles of the clinic;

(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or

(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

(b) As used in this subsection, “urgent medical condition” means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

(7) Notwithstanding ORS 414.334, the [department] **authority** may conduct prospective drug utilization review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in the preceding six-month period.

(8) Notwithstanding subsection (3) of this section, the [department] **authority** may pay a pharmacy for a particular brand name drug rather than the generic version of the drug after notifying the pharmacy that the cost of the particular brand name drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

SECTION 297. ORS 414.327 is amended to read:

414.327. [(1) *The Department of Human Services shall seek a waiver from the federal Centers for Medicare and Medicaid Services to allow the department to communicate prescription drug orders by electronic means from a practitioner authorized to prescribe drugs directly to the dispensing pharmacist.*]

[(2)] The [Department of Human Services] **Oregon Health Authority** shall adopt rules permitting [the department] **a practitioner** to communicate prescription drug orders by electronic means [from a practitioner authorized to prescribe drugs] directly to the dispensing pharmacist.

SECTION 298. ORS 414.329 is amended to read:

414.329. (1) Notwithstanding ORS 414.705 to 414.750, the [Department of Human Services] **Oregon Health Authority** shall adopt rules modifying the prescription drug benefits for persons who are eligible for Medicare Part D prescription drug coverage and who receive prescription drug benefits under the state medical assistance program or Title XIX of the Social Security Act. The rules shall include but need not be limited to:

(a) Identification of the Part D classes of drugs for which federal financial participation is not available and that are not covered classes of drugs;

(b) Identification of the Part D classes of drugs for which federal financial participation is not available and that are covered classes of drugs;

(c) Identification of the classes of drugs not covered under Medicare Part D prescription drug coverage for which federal financial participation is available and that are covered classes of drugs; and

(d) Cost-sharing obligations related to the provision of Part D classes of drugs for which federal financial participation is not available.

(2) As used in this section, “covered classes of drugs” means classes of prescription drugs provided to persons eligible for prescription drug coverage under the state medical assistance program or Title XIX of the Social Security Act.

SECTION 298a. ORS 414.330 is amended to read:

414.330. The Legislative Assembly finds that:

(1) The cost of prescription drugs in the [Oregon Health Plan] **medical assistance program** is growing and will soon be unsustainable;

(2) The benefit of prescription drugs when appropriately used decreases the need for other expensive treatments and improves the health of Oregonians; and

(3) Providing the most effective drugs in the most cost-effective manner will benefit both patients and taxpayers.

SECTION 298b. ORS 414.332 is amended to read:

414.332. It is the policy of the State of Oregon that a Practitioner-Managed Prescription Drug Plan will ensure that:

(1) Oregonians have access to the most effective prescription drugs appropriate for their clinical conditions;

(2) Decisions concerning the clinical effectiveness of prescription drugs are made by licensed health practitioners, are informed by the latest peer-reviewed research and consider the health condition of a patient or characteristics of a patient, including the patient's gender, race or ethnicity; and

(3) The cost of prescription drugs in the [*Oregon Health Plan*] **medical assistance program** is managed through market competition among pharmaceutical manufacturers by publicly considering, first, the effectiveness of a given drug and, second, its relative cost.

SECTION 299. ORS 414.334 is amended to read:

414.334. (1) The [*Department of Human Services*] **Oregon Health Authority** shall adopt a Practitioner-Managed Prescription Drug Plan for the [*Oregon Health Plan*] **medical assistance program**. The purpose of the plan is to ensure that enrollees of the [*Oregon Health Plan*] **medical assistance program** receive the most effective prescription drug available at the best possible price.

(2) Before adopting the plan, the [*department*] **authority** shall conduct public meetings and consult with the Health Resources Commission.

(3) The [*department*] **authority** shall consult with representatives of the regulatory boards and associations representing practitioners who are prescribers under the [*Oregon Health Plan*] **medical assistance program** and ensure that practitioners receive educational materials and have access to training on the Practitioner-Managed Prescription Drug Plan.

(4) Notwithstanding the Practitioner-Managed Prescription Drug Plan adopted by the [*department*] **authority**, a practitioner may prescribe any drug that the practitioner indicates is medically necessary for an enrollee as being the most effective available.

(5) An enrollee may appeal to the [*department*] **authority** a decision of a practitioner or the [*department*] **authority** to not provide a prescription drug requested by the enrollee.

(6) This section does not limit the decision of a practitioner as to the scope and duration of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

SECTION 300. ORS 414.336 is amended to read:

414.336. The [*Department of Human Services*] **Oregon Health Authority** may not adopt or amend any rule that requires a prescribing practitioner to contact the [*department*] **authority** to request an exception for a medically appropriate or medically necessary drug that is not listed on the Practitioner-Managed Prescription Drug Plan drug list for that class of drugs adopted under ORS 414.334, unless otherwise authorized by enabling legislation setting forth the requirement for prior authorization.

SECTION 301. ORS 414.338 is amended to read:

414.338. (1) The Patient Prescription Drug Assistance Program is established. The purpose of the program is to match low-income Oregonians who lack prescription drug benefit coverage with prescription drug assistance programs offered by pharmaceutical companies.

(2) The program shall:

(a) Provide information on:

(A) Eligibility requirements and coverage provided by publicly funded prescription drug benefit programs administered by the [*Department of Human Services*] **Oregon Health Authority**; and

(B) The process for applying to receive publicly funded prescription drug benefits;

(b) Assist a patient in applying to pharmaceutical companies for free or discounted prescription drug medications if the patient is not eligible for any publicly funded prescription drug benefit program;

(c) Provide information, in an organized and easily understood manner, to patients, physicians, pharmacists and pharmacies regarding patient qualifications for prescription drug assistance programs;

(d) Increase awareness of the various prescription drug assistance programs offered by pharmaceutical companies; and

(e) Establish a toll-free hotline and Internet website to increase public awareness of the Patient Prescription Drug Assistance Program and to provide public access to the information and services provided through the program.

(3)(a) The College of Pharmacy at Oregon State University shall operate the Patient Prescription Drug Assistance Program until June 30, 2003, and may operate the program thereafter unless the [Department of Human Services] **authority** enters into a contract described in paragraph (b) of this subsection.

(b) For periods on or after July 1, 2003, the [Department of Human Services] **authority** may contract with any pharmacy provider to operate the Patient Prescription Drug Assistance Program.

SECTION 302. ORS 414.350 is amended to read:

414.350. As used in ORS 414.350 to 414.415:

(1) "Appropriate and medically necessary use" means drug prescribing, drug dispensing and patient medication usage in conformity with the criteria and standards developed under ORS 414.350 to 414.415.

(2) "Board" means the Drug Use Review Board created under ORS 414.355.

(3) "Compendia" means those resources widely accepted by the medical profession in the efficacious use of drugs, including the following sources:

(a) The American Hospital Formulary Services drug information.

(b) The United States Pharmacopeia drug information.

(c) The American Medical Association drug evaluations.

(d) The peer-reviewed medical literature.

(e) Drug therapy information provided by manufacturers of drug products consistent with the federal Food and Drug Administration requirements.

(4) "Counseling" means the effective communication of information by a pharmacist, as defined by rules of the State Board of Pharmacy.

(5) "Criteria" means the predetermined and explicitly accepted elements based on the compendia that are used to measure drug use on an ongoing basis to determine if the use is appropriate, medically necessary and not likely to result in adverse medical outcomes.

(6) "Drug-disease contraindication" means the potential for, or the occurrence of, an undesirable alteration of the therapeutic effect of a given prescription because of the presence, in the patient for whom it is prescribed, of a disease condition or the potential for, or the occurrence of, a clinically significant adverse effect of the drug on the patient's disease condition.

(7) "Drug-drug interaction" means the pharmacological or clinical response to the administration of at least two drugs different from that response anticipated from the known effects of the two drugs when given alone, which may manifest clinically as antagonism, synergism or idiosyncrasy. Such interactions have the potential to have an adverse effect on the individual or lead to a clinically significant adverse reaction, or both, that:

(a) Is characteristic of one or any of the drugs present; or

(b) Leads to interference with the absorption, distribution, metabolizing, excretion or therapeutic efficacy of one or any of the drugs.

(8) "Drug use review" means the programs designed to measure and assess on a retrospective and a prospective basis, through an evaluation of claims data, the proper utilization, quantity, appropriateness as therapy and medical necessity of prescribed medication in the medical assistance program.

(9) "Intervention" means an action taken by the [Department of Human Services] **Oregon Health Authority** with a prescriber or pharmacist to inform about or to influence prescribing or dispensing practices or utilization of drugs.

(10) "Overutilization" means the use of a drug in quantities or for durations that put the recipient at risk of an adverse medical result.

(11) "Pharmacist" means an individual who is licensed as a pharmacist under ORS chapter 689.

(12) "Prescriber" means any person authorized by law to prescribe drugs.

(13) "Prospective program" means the prospective drug use review program described in ORS 414.375.

(14) "Retrospective program" means the retrospective drug use review program described in ORS 414.380.

(15) "Standards" means the acceptable prescribing and dispensing methods determined by the compendia, in accordance with local standards of medical practice for health care providers.

(16) "Therapeutic appropriateness" means drug prescribing based on scientifically based and clinically relevant drug therapy that is consistent with the criteria and standards developed under ORS 414.350 to 414.415.

(17) "Therapeutic duplication" means the prescribing and dispensing of two or more drugs from the same therapeutic class such that the combined daily dose puts the recipient at risk of an adverse medical result or incurs additional program costs without additional therapeutic benefits.

(18) "Underutilization" means that a drug is used by a recipient in insufficient quantity to achieve a desired therapeutic goal.

SECTION 303. ORS 414.355 is amended to read:

414.355. (1) There is created a 12-member Drug Use Review Board responsible for advising the [Department of Human Services] **Oregon Health Policy Board** on the implementation of the retrospective and prospective drug utilization review programs.

(2) The members of the **Drug Use Review** Board shall be appointed by the Director of [Human Services] **the Oregon Health Authority** and shall serve a term of two years. An individual appointed to the board may be reappointed upon completion of the individual's term. The membership of the board shall be composed of the following:

(a) Four persons licensed as physicians and actively engaged in the practice of medicine or osteopathic medicine in Oregon, who may be from among persons recommended by the Oregon Medical Association, the Osteopathic Physicians and Surgeons of Oregon or other organization representing physicians;

(b) One person licensed as a physician in Oregon who is actively engaged in academic medicine;

(c) Three persons licensed and actively practicing pharmacy in Oregon who may be from among persons recommended by the Oregon State Pharmacists Association, the National Association of Chain Drug Stores, the Oregon Society of Hospital Pharmacists, the Oregon Society of Consultant Pharmacists or other organizations representing pharmacists whether affiliated or unaffiliated with any association;

(d) One person licensed as a pharmacist in Oregon who is actively engaged in academic pharmacy;

(e) Two persons who shall represent persons receiving medical assistance; and

(f) One person licensed and actively practicing dentistry in Oregon who may be from among persons recommended by the Oregon Dental Association or other organizations representing dentists.

(3) Board members must have expertise in one or more of the following:

(a) Clinically appropriate prescribing of outpatient drugs covered by the medical assistance program.

(b) Clinically appropriate dispensing and monitoring of outpatient drugs covered by the medical assistance program.

(c) Drug use review, evaluation and intervention.

(d) Medical quality assurance.

(4) The director shall fill a vacancy on the board by appointing a new member to serve the remainder of the unexpired term based upon qualifications described in subsections (2) and (3) of this section.

(5) A board member may be removed only by a vote of eight members of the board and the removal must be approved by the director. The director may remove a member, without board action,

if a member fails to attend two consecutive meetings unless such member is prevented from attending by serious illness of the member or in the member's family.

SECTION 304. ORS 414.360 is amended to read:

414.360. (1) The Drug Use Review Board shall advise the [*Department of Human Services*] **Oregon Health Policy Board** on:

(a) Adoption of rules to implement ORS 414.350 to 414.415 in accordance with the provisions of ORS 183.710 to 183.725, 183.745 and 183.750 and ORS chapter 183.

(b) Implementation of the medical assistance program retrospective and prospective programs as described in ORS 414.350 to 414.415, including the type of software programs to be used by the pharmacist for prospective drug use review and the provisions of the contractual agreement between the state and any entity involved in the retrospective drug use review program.

(c) Development of and application of the criteria and standards to be used in retrospective and prospective drug utilization review in a manner that insures that such criteria and standards are based on the compendia, relevant guidelines obtained from professional groups through consensus-driven processes, the experience of practitioners with expertise in drug therapy, data and experience obtained from drug utilization review program operations. The **Drug Use Review** Board shall have an open professional consensus process for establishing and revising criteria and standards. Criteria and standards shall be available to the public. In developing recommendations for criteria and standards, the board shall establish an explicit ongoing process for soliciting and considering input from interested parties. The board shall make timely revisions to the criteria and standards based upon this input in addition to revisions based upon scheduled review of the criteria and standards. Further, the drug utilization review standards shall reflect the local practices of prescribers in order to monitor:

- (A) Therapeutic appropriateness.
- (B) Overutilization or underutilization.
- (C) Therapeutic duplication.
- (D) Drug-disease contraindications.
- (E) Drug-drug interactions.
- (F) Incorrect drug dosage or drug treatment duration.
- (G) Clinical abuse or misuse.
- (H) Drug allergies.

(d) Development, selection and application of and assessment for interventions for medical assistance program prescribers, dispensers and patients that are educational and not punitive in nature.

(2) In reviewing retrospective and prospective drug use, the **Drug Use Review** Board may consider only drugs that have received final approval from the federal Food and Drug Administration.

SECTION 305. ORS 414.365 is amended to read:

414.365. In addition to advising the [*Department of Human Services*] **Oregon Health Policy Board**, the Drug Use Review Board shall do the following subject to the approval of the [*Director of Human Services*] **Oregon Health Policy Board**:

- (1) Publish an annual report, as described in ORS 414.415.
- (2) Publish and disseminate educational information to prescribers and pharmacists regarding the **Drug Use Review** Board and the drug use review programs, including information on the following:
 - (a) Identifying and reducing the frequency of patterns of fraud, abuse or inappropriate or medically unnecessary care among prescribers, pharmacists and recipients.
 - (b) Potential or actual severe or adverse reactions to drugs.
 - (c) Therapeutic appropriateness.
 - (d) Overutilization or underutilization.
 - (e) Appropriate use of generic products.
 - (f) Therapeutic duplication.

- (g) Drug-disease contraindications.
- (h) Drug-drug interactions.
- (i) Drug allergy interactions.
- (j) Clinical abuse and misuse.

(3) Adopt and implement procedures designed to insure the confidentiality of any information collected, stored, retrieved, assessed or analyzed by the **Drug Use Review Board**, staff of the board or contractors to the drug use review programs that identifies individual prescribers, pharmacists or recipients.

SECTION 306. ORS 414.375 is amended to read:

414.375. The prospective drug use review program must be based on the guidelines established by the [*Department of Human Services*] **Oregon Health Policy Board** in consultation with the Drug Use Review Board. The program must provide that prior to the prescription being filled or delivered a review will be conducted by the pharmacist at the point of sale to screen for potential drug therapy problems resulting from the following:

- (1) Therapeutic duplication.
- (2) Drug-drug interactions, including serious interactions with nonprescription or over-the-counter drugs.
- (3) Incorrect dosage and duration of treatment.
- (4) Drug-allergy interactions.
- (5) Clinical abuse and misuse.
- (6) Drug-disease contraindications.

SECTION 307. ORS 414.380 is amended to read:

414.380. The retrospective drug use review program must:

(1) Be based on the guidelines established by the [*Department of Human Services in consultation with*] **Oregon Health Policy Board based upon recommendations from** the Drug Use Review Board; and

(2) Use the mechanized drug claims processing and information retrieval system to analyze claims data on drug use against explicit predetermined standards that are based on the compendia and other sources to monitor the following:

- (a) Therapeutic appropriateness.
- (b) Overutilization or underutilization.
- (c) Fraud and abuse.
- (d) Therapeutic duplication.
- (e) Drug-disease contraindications.
- (f) Drug-drug interactions.
- (g) Incorrect drug dosage or duration of drug treatment.
- (h) Clinical abuse and misuse.

SECTION 308. ORS 414.390 is amended to read:

414.390. (1) Information collected under ORS 414.350 to 414.415 that identifies an individual is confidential and shall not be disclosed by the Drug Use Review Board, the retrospective drug use review program, [*or the Department of Human Services*] **the Oregon Health Policy Board or the Oregon Health Authority** to any person other than a health care provider appearing on a recipient's medication profile.

(2) The staff of the **Drug Use Review Board** may have access to identifying information for purposes of carrying out intervention activities. The identifying information shall not be released to anyone other than a staff member of the board, retrospective drug use review program, [*Department of Human Services*] **Oregon Health Policy Board, Oregon Health Authority**[,] or to any health care provider appearing on a recipient's medication profile or, for purposes of investigating potential fraud in programs administered by the [*Department of Human Services*] **Oregon Health Authority**, to the Department of Justice.

(3) The **Drug Use Review Board** may release cumulative, nonidentifying information for the purposes of legitimate research and for educational purposes.

SECTION 309. ORS 414.410 is amended to read:

414.410. The [Department of Human Services] **Oregon Health Authority** shall provide staff to the Drug Use Review Board.

SECTION 309a. ORS 414.420 is amended to read:

414.420. (1) When a woman who is enrolled in [the Oregon Health Plan] **medical assistance** as a pregnant woman becomes an inmate residing in a public institution, the Department of Human Services shall suspend medical assistance [under the plan].

(2) The department shall continue to determine the eligibility of the pregnant woman as categorically needy as defined in ORS 414.025.

(3) Upon notification that a pregnant woman described under subsection (1) of this section is no longer an inmate residing in a public institution, the department shall reinstate medical assistance [under the plan] if the woman is otherwise eligible for medical assistance.

SECTION 310. ORS 414.426 is amended to read:

414.426. The [Department of Human Services] **Oregon Health Authority** is hereby authorized to pay the cost of care for patients in institutions operated under ORS 179.321 under the medical assistance program established by ORS chapter 414.

SECTION 311. ORS 414.428 is amended to read:

414.428. (1) An individual described in ORS 414.025 [(2)(r)] **(2)(s)** who is eligible for or receiving medical assistance and who is an American Indian and Alaskan Native beneficiary shall receive the benefit package of health care services described in ORS [414.835] **414.707 (1)** if:

(a) The [Department of Human Services] **Oregon Health Authority** receives 100 percent federal medical assistance percentage for payments made by the [department] **authority** for the health care services provided as part of the benefit package described in ORS [414.835 that are not included in the benefit package described in ORS 414.834] **414.707 (1)**; or

(b) The [department] **authority** receives funding from the Indian tribes for which federal financial participation is available.

(2) As used in this section, "American Indian and Alaskan Native beneficiary" means:

(a) A member of a federally recognized Indian tribe, band or group;

(b) An Eskimo or Aleut or other Alaskan native enrolled by the United States Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601; or

(c) A person who is considered by the United States Secretary of the Interior to be an Indian for any purpose.

SECTION 312. Section 2, chapter 76, Oregon Laws 2003, is amended to read:

Sec. 2. (1) Section 1, **chapter 76, Oregon Laws 2003**, [of this 2003 Act] becomes operative on the day after the date the [Department of Human Services] **Oregon Health Authority** receives approval from the federal Centers for Medicare and Medicaid Services to amend Oregon's Medicaid waiver.

(2) The [Department of Human Services] **authority** shall notify the Legislative Counsel upon receipt of approval or disapproval to amend Oregon's Medicaid waiver.

SECTION 313. ORS 414.534 is amended to read:

414.534. (1) The [Department of Human Services] **Oregon Health Authority** shall provide medical assistance to a woman who:

(a) Is screened for breast or cervical cancer through the Oregon Breast and Cervical Cancer Program operated by the [department] **authority**;

(b) As a result of a screening in accordance with paragraph (a) of this subsection, is found by a provider to be in need of treatment for breast or cervical cancer;

(c) Does not otherwise have creditable coverage, as defined in 42 U.S.C. 300gg(c); and

(d) Is 64 years of age or younger.

(2) The period of time a woman can receive medical assistance based on the eligibility criteria of subsection (1) of this section:

(a) Begins:

(A) On the date the Department of **Human Services** makes a formal determination that the woman is eligible for medical assistance in accordance with subsection (1) of this section; or

(B) Up to three months prior to the month in which the woman applied for medical assistance if on the earlier date the woman met the eligibility criteria of subsection (1) of this section.

(b) Ends when:

(A) The woman is no longer in need of treatment; or

(B) The department determines the woman no longer meets the eligibility criteria of subsection (1) of this section.

SECTION 314. ORS 414.536 is amended to read:

414.536. (1) **If** the Department of Human Services [*shall provide medical assistance to a woman whom the department determines is presumptively eligible for medical assistance. As used in this section, a woman is “presumptively eligible for medical assistance” if the department determines that the*] **determines that a woman likely is eligible for medical assistance under ORS 414.534, the department shall determine her to be presumptively eligible for medical assistance until a formal determination on eligibility is made.**

(2) The period of time a woman may receive medical assistance based on presumptive eligibility is limited. The period of time:

(a) Begins on the date that the department determines the woman likely meets the eligibility criteria under ORS 414.534; and

(b) Ends on the earlier of the following dates:

(A) If the woman applies for medical assistance following the determination by the department that the woman is presumptively eligible for medical assistance, the date on which a formal determination on eligibility is made by the department in accordance with ORS 414.534; or

(B) If the woman does not apply for medical assistance following the determination by the department that the woman is presumptively eligible for medical assistance, the last day of the month following the month in which presumptive eligibility begins.

SECTION 315. ORS 414.538 is amended to read:

414.538. (1) The Department of Human Services [*shall provide medical assistance under ORS 414.534 or 414.536 to a woman who meets general coverage requirements applicable to recipients of medical assistance. The department*] may not impose income or resource limitations or a prior period of uninsurance on a woman who otherwise qualifies for medical assistance under ORS 414.534 or 414.536.

(2) In [*providing*] **determining eligibility for** medical assistance under ORS 414.534 or 414.536, the department [*of Human Services*] shall give priority to low-income women.

SECTION 316. ORS 414.540 is amended to read:

414.540. The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules necessary for the implementation and administration of ORS 414.534 to 414.538.

SECTION 317. ORS 414.630 is amended to read:

414.630. (1) The [*Department of Human Services*] **Oregon Health Authority** shall execute pre-paid capitated health service contracts for at least hospital or physician medical care, or both, with hospital and medical organizations, health maintenance organizations and any other appropriate public or private persons.

(2) For purposes of ORS 279A.025, 279A.140, 414.145 and 414.610 to 414.640, instrumentalities and political subdivisions of the state are authorized to enter into prepaid capitated health service contracts with the [*Department of Human Services*] **Oregon Health Authority or the Oregon Health Policy Board** and shall not thereby be considered to be transacting insurance.

(3) In the event that there is an insufficient number of qualified bids for prepaid capitated health services contracts for hospital or physician medical care, or both, in some areas of the state, the [*department*] **Oregon Health Authority** may continue a fee for service payment system.

(4) Payments to providers may be subject to contract provisions requiring the retention of a specified percentage in an incentive fund or to other contract provisions by which adjustments to the payments are made based on utilization efficiency.

SECTION 318. ORS 414.640 is amended to read:

414.640. (1) Eligible persons shall select, to the extent practicable as determined by the [Department of Human Services] **Oregon Health Authority**, from among available providers participating in the program.

(2) The [department] **authority** by rule shall define the circumstances under which it may choose to reimburse for any medical services not covered under the prepaid capitation or costs of related services provided by or under referral from any physician participating in the program in which the eligible person is enrolled.

(3) The [department] **authority** shall establish requirements as to the minimum time period that an eligible person is assigned to specific providers in the system.

(4) Actions taken by providers, potential providers, contractors and bidders in specific accordance with this chapter in forming consortiums or in otherwise entering into contracts to provide medical care shall be considered to be conducted at the direction of this state, shall be considered to be lawful trade practices and shall not be considered to be the transaction of insurance for purposes of ORS 279A.025, 279A.140, 414.145 and 414.610 to 414.640.

SECTION 319. ORS 414.707 is amended to read:

414.707. [(1) Subject to funds available:]

[(a)] (1) Persons [who are categorically needy as described in ORS 414.025 (2)(n) and (o), and persons under 19 years of age and pregnant women who are eligible to receive health services under ORS 414.706,] **described in ORS 414.706 (1), (2), (3) and (5)** are eligible to receive all the health services approved and funded by the Legislative Assembly.

[(b)] (2) Persons described in ORS 414.708 are eligible to receive the health services described in ORS 414.705 (1)(c), (f) and (g).

[(c) Persons 19 years of age and older who are eligible to receive health services under ORS 414.706 are eligible to receive the health services described in ORS 414.705 (1)(b) to (m).]

[(2) Persons who are categorically needy as described in ORS 414.025 (2)(n) and (o), and persons under 19 years of age and pregnant women who are eligible to receive health services under ORS 414.706, must be provided, at a minimum, the health services described in ORS 414.705 (1)(a) to (g).]

[(3) Persons 19 years of age and older who are eligible to receive health services under ORS 414.706 must be provided, at a minimum, health services described in ORS 414.705 (1)(b) to (h).]

[(4) Persons described in ORS 414.708 must be provided, at a minimum, the health services described in ORS 414.705 (1)(c).]

[(5) The Department of Human Services shall:]

[(a) Develop at least three benefit packages of provider services to be offered under ORS 414.705 (1)(j); and]

[(b) Define by rule the services to be offered under ORS 414.705 (1)(k).]

[(6) Notwithstanding ORS 414.735, the Legislative Assembly shall adjust health services funded under ORS 414.705 (1) by increasing or reducing benefit packages or health services and, subject to ORS 414.709, by increasing or reducing the population of eligible persons.]

SECTION 320. ORS 414.708 is amended to read:

414.708. (1) A person is eligible to receive the health services described in ORS 414.707 [(1)(b)] (2) when the person is a resident of this state who:

(a) Is 65 years of age or older, or is blind or has a disability as those terms are defined in ORS 411.704;

(b) Has a gross annual income that does not exceed the standard established by the [Department of Human Services] **Oregon Health Policy Board**; and

(c) Is not covered under any public or private prescription drug benefit program.

(2) A person receiving prescription drug services under ORS 414.707 [(1)(b)] (2) shall pay up to a percentage of the Medicaid price of the prescription drug established by the [department] **authority** by rule and the dispensing fee.

SECTION 321. ORS 414.709 is amended to read:

414.709. (1) Except as provided in subsection (2) of this section, if insufficient resources are available during a biennium, the population of eligible persons receiving health services may not be reduced below the population of eligible persons approved and funded in the legislatively adopted budget for the [Department of Human Services] **Oregon Health Authority** for the biennium.

(2) The [Department of Human Services] **Oregon Health Authority** may periodically limit enrollment of persons described in ORS 414.708 in order to stay within the legislatively adopted budget for the [department] **authority**.

SECTION 322. ORS 414.710 is amended to read:

414.710. The following services [are available to persons eligible for services under ORS 414.025, 414.036, 414.042, 414.065 and 414.705 to 414.750 but such services] are not subject to ORS 414.720:

(1) Nursing facilities, **institutional** and home- and community-based waived services funded through the Department of Human Services; **and**

[~~(2) Medical assistance to eligible persons who receive assistance under ORS 411.706 or to children described in ORS 414.025 (2)(f), (i), (j), (k) and (m), 418.001 to 418.034, 418.189 to 418.970 and 657A.020 to 657A.460;~~]

[~~(3) Institutional, home- and community-based waived services or community mental health program care for persons with mental retardation, developmental disabilities or severe mental illness and for the treatment of alcohol and drug dependent persons; and~~]

[~~(4) (2) Services to children who are wards of the Department of Human Services by order of the juvenile court and services to children and families for health care or mental health care through the department.~~]

SECTION 323. ORS 414.712 is amended to read:

414.712. The [Department of Human Services] **Oregon Health Authority** shall provide medical assistance under ORS 414.705 to 414.750 to eligible persons who [receive assistance under] **are determined eligible for medical assistance by the Department of Human Services according to** ORS 411.706. [and to children described in ORS 414.025 (2)(f), (i), (j), (k) and (m), 418.001 to 418.034, 418.189 to 418.970 and 657A.020 to 657A.460 and those mental health and chemical dependency services recommended according to standards of medical assistance and according to the schedule of implementation established by the Legislative Assembly. In providing medical assistance services described in ORS 414.018 to 414.024, 414.042, 414.107, 414.710, 414.720 and 735.712, the Department of Human Services] **The Oregon Health Authority** shall also provide the following:

(1) Ombudsman services for eligible persons who receive assistance under ORS 411.706. With the concurrence of the Governor **and the Oregon Health Policy Board**, the Director of [Human Services] **the Oregon Health Authority** shall appoint ombudsmen and may terminate an ombudsman. Ombudsmen are under the supervision and control of the director. An ombudsman shall serve as a patient's advocate whenever the patient or a physician or other medical personnel serving the patient is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider. Patients shall be informed of the availability of an ombudsman. Ombudsmen shall report to the Governor **and the Oregon Health Policy Board** in writing at least once each quarter. A report shall include a summary of the services that the ombudsman provided during the quarter and the ombudsman's recommendations for improving ombudsman services and access to or quality of care provided to eligible persons by health care providers.

(2) Case management services in each health care provider organization for those eligible persons who receive assistance under ORS 411.706. Case managers shall be trained in and shall exhibit skills in communication with and sensitivity to the unique health care needs of people who receive assistance under ORS 411.706. Case managers shall be reasonably available to assist patients served by the organization with the coordination of the patient's health care services at the reasonable request of the patient or a physician or other medical personnel serving the patient. Patients shall be informed of the availability of case managers.

(3) A mechanism, established by rule, for soliciting consumer opinions and concerns regarding accessibility to and quality of the services of each health care provider.

(4) A choice of available medical plans and, within those plans, choice of a primary care provider.

(5) Due process procedures for any individual whose request for medical assistance coverage for any treatment or service is denied or is not acted upon with reasonable promptness. These procedures shall include an expedited process for cases in which a patient's medical needs require swift resolution of a dispute.

SECTION 324. ORS 414.720 is amended to read:

414.720. (1) The Health Services Commission shall conduct public hearings prior to making the report described in subsection (3) of this section. The commission shall solicit testimony and information from advocates representing seniors, persons with disabilities, mental health services consumers and low-income Oregonians, representatives of commercial carriers, representatives of small and large Oregon employers and providers of health care, including but not limited to physicians licensed to practice medicine, dentists, oral surgeons, chiropractors, naturopaths, hospitals, clinics, pharmacists, nurses and allied health professionals.

(2) The commission shall actively solicit public involvement in a community meeting process to build a consensus on the values to be used to guide health resource allocation decisions.

(3) The commission shall report to the Governor a list of health services ranked by priority, from the most important to the least important, representing the comparative benefits of each service to the entire population to be served. The list submitted by the commission pursuant to this subsection is not subject to alteration by any other state agency. The recommendation may include practice guidelines reviewed and adopted by the commission pursuant to subsection (4) of this section.

(4) In order to encourage effective and efficient medical evaluation and treatment, the commission:

(a) May include clinical practice guidelines in its prioritized list of services. The commission shall actively solicit testimony and information from the medical community and the public to build a consensus on clinical practice guidelines developed by the commission.

(b) Shall consider both the clinical effectiveness and cost-effectiveness of health services in determining their relative importance using peer-reviewed medical literature as defined in ORS 743A.060.

(5) The commission shall make its report by July 1 of the year preceding each regular session of the Legislative Assembly and shall submit a copy of its report to the Governor, the Speaker of the House of Representatives and the President of the Senate.

(6) The commission may alter the list during interim only under the following conditions:

(a) Technical changes due to errors and omissions; and

(b) Changes due to advancements in medical technology or new data regarding health outcomes.

(7) If a service is deleted or added and no new funding is required, the commission shall report to the Speaker of the House of Representatives and the President of the Senate. However, if a service to be added requires increased funding to avoid discontinuing another service, the commission must report to the Emergency Board to request the funding.

(8) The report listing services to be provided pursuant to ORS [414.036,] 414.042, 414.065, [414.107,] 414.705 to 414.725 and 414.735 to 414.750 shall remain in effect from October 1 of the odd-numbered year through September 30 of the next odd-numbered year.

SECTION 325. ORS 414.725 is amended to read:

414.725. (1)(a) Pursuant to rules adopted by the [Department of Human Services] **Oregon Health Authority**, the [department] **authority** shall execute prepaid managed care health services contracts for health services funded by the Legislative Assembly. The contract must require that all services are provided to the extent and scope of the Health Services Commission's report for each service provided under the contract. The contracts are not subject to ORS chapters 279A and 279B, except ORS 279A.250 to 279A.290 and 279B.235. Notwithstanding ORS 414.720 (8), the rules adopted by the [department] **authority** shall establish timelines for executing the contracts described in this paragraph.

(b) It is the intent of ORS 414.705 to 414.750 that the state use, to the greatest extent possible, prepaid managed care health services organizations to provide physical health, dental, mental health and chemical dependency services under ORS 414.705 to 414.750.

(c) The [department] **authority** shall solicit qualified providers or plans to be reimbursed for providing the covered services. The contracts may be with hospitals and medical organizations, health maintenance organizations, managed health care plans and any other qualified public or private prepaid managed care health services organization. The [department] **authority** may not discriminate against any contractors that offer services within their providers' lawful scopes of practice.

(d) The [department] **authority** shall establish annual financial reporting requirements for prepaid managed care health services organizations. The [department] **authority** shall prescribe a reporting procedure that elicits sufficiently detailed information for the [department] **authority** to assess the financial condition of each prepaid managed care health services organization and that includes information on the three highest executive salary and benefit packages of each prepaid managed care health services organization.

(e) The [department] **authority** shall require compliance with the provisions of paragraph (d) of this subsection as a condition of entering into a contract with a prepaid managed care health services organization.

(2) The [department] **authority** may institute a fee-for-service case management system or a fee-for-service payment system for the same physical health, dental, mental health or chemical dependency services provided under the health services contracts for persons eligible for health services under ORS 414.705 to 414.750 in designated areas of the state in which a prepaid managed care health services organization is not able to assign an enrollee to a person or entity that is primarily responsible for coordinating the physical health, dental, mental health or chemical dependency services provided to the enrollee. In addition, the [department] **authority** may make other special arrangements as necessary to increase the interest of providers in participation in the state's managed care system, including but not limited to the provision of stop-loss insurance for providers wishing to limit the amount of risk they wish to underwrite.

(3) As provided in subsections (1) and (2) of this section, the aggregate expenditures by the [department] **authority** for health services provided pursuant to ORS 414.705 to 414.750 may not exceed the total dollars appropriated for health services under ORS 414.705 to 414.750.

(4) Actions taken by providers, potential providers, contractors and bidders in specific accordance with ORS 414.705 to 414.750 in forming consortiums or in otherwise entering into contracts to provide health care services shall be performed pursuant to state supervision and shall be considered to be conducted at the direction of this state, shall be considered to be lawful trade practices and may not be considered to be the transaction of insurance for purposes of the Insurance Code.

(5) Health care providers contracting to provide services under ORS 414.705 to 414.750 shall advise a patient of any service, treatment or test that is medically necessary but not covered under the contract if an ordinarily careful practitioner in the same or similar community would do so under the same or similar circumstances.

(6) A prepaid managed care health services organization shall provide information on contacting available providers to an enrollee in writing within 30 days of assignment to the health services organization.

(7) Each prepaid managed care health services organization shall provide upon the request of an enrollee or prospective enrollee annual summaries of the organization's aggregate data regarding:

(a) Grievances and appeals; and

(b) Availability and accessibility of services provided to enrollees.

(8) A prepaid managed care health services organization may not limit enrollment in a designated area based on the zip code of an enrollee or prospective enrollee.

SECTION 326. ORS 414.727 is amended to read:

414.727. (1) A prepaid managed care health services organization, as defined in ORS 414.736, that contracts with the [Department of Human Services] **Oregon Health Authority** under ORS 414.725

(1) to provide prepaid managed care health services, including hospital services, shall reimburse Type A and Type B hospitals and rural critical access hospitals, as described in ORS 442.470 and identified by the Office of Rural Health as rural hospitals, fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the prepaid managed care health services organization for the contract period.

(2) The [department] **authority** shall base the capitation rates described in subsection (1) of this section on the most recent audited Medicare cost report for Oregon hospitals adjusted to reflect the Medicaid mix of services.

(3) This section may not be construed to prohibit a prepaid managed care health services organization and a hospital from mutually agreeing to reimbursement other than the reimbursement specified in subsection (1) of this section.

(4) Hospitals reimbursed under subsection (1) of this section are not entitled to any additional reimbursement for services provided.

SECTION 327. ORS 414.728 is amended to read:

414.728. For services provided to persons who are entitled to receive medical assistance and whose medical assistance benefits are not administered by a prepaid managed care health services organization, as defined in ORS 414.736, the [Department of Human Services] **Oregon Health Authority** shall reimburse Type A and Type B hospitals and rural critical access hospitals, as described in ORS 442.470 and identified by the Office of Rural Health as rural hospitals, fully for the cost of covered services based on the most recent audited Medicare cost report for Oregon hospitals adjusted to reflect the Medicaid mix of services.

SECTION 328. ORS 414.735 is amended to read:

414.735. (1) If insufficient resources are available during a contract period:

(a) The population of eligible persons determined by law shall not be reduced.

(b) The reimbursement rate for providers and plans established under the contractual agreement shall not be reduced.

(2) In the circumstances described in subsection (1) of this section, reimbursement shall be adjusted by reducing the health services for the eligible population by eliminating services in the order of priority recommended by the Health Services Commission, starting with the least important and progressing toward the most important.

(3) The [Department of Human Services] **Oregon Health Policy Board** shall obtain the approval of the Legislative Assembly or Emergency Board, if the Legislative Assembly is not in session, before instituting the reductions. In addition, providers contracting to provide health services under ORS 414.705 to 414.750 must be notified at least two weeks prior to any legislative consideration of such reductions. Any reductions made under this section shall take effect no sooner than 60 days following final legislative action approving the reductions.

SECTION 329. ORS 414.736 is amended to read:

414.736. As used in this section and ORS 414.725, 414.737, 414.738, 414.739, 414.740, 414.741, 414.742[,] and 414.743 [and 414.744]:

(1) "Designated area" means a geographic area of the state defined by the [Department of Human Services] **Oregon Health Authority** by rule that is served by a prepaid managed care health services organization.

(2) "Fully capitated health plan" means an organization that contracts with the [Department of Human Services] **Oregon Health Authority or the Oregon Health Policy Board** on a prepaid capitated basis under ORS 414.725 to provide an adequate network of providers to ensure that the health services provided under the contract are reasonably accessible to enrollees.

(3) "Physician care organization" means an organization that contracts with the [Department of Human Services] **Oregon Health Authority or the Oregon Health Policy Board** on a prepaid capitated basis under ORS 414.725 to provide an adequate network of providers to ensure that the health services described in ORS 414.705 (1)(b), (c), (d), (e), (g) and (j) are reasonably accessible to enrollees. A physician care organization may also contract with the [department] **authority or the**

board on a prepaid capitated basis to provide the health services described in ORS 414.705 (1)(k) and (L).

(4) “Prepaid managed care health services organization” means a managed physical health, dental, mental health or chemical dependency organization that contracts with the [*Department of Human Services*] **authority or the board** on a prepaid capitated basis under ORS 414.725. A prepaid managed care health services organization may be a dental care organization, fully capitated health plan, physician care organization, mental health organization or chemical dependency organization.

SECTION 330. ORS 414.737 is amended to read:

414.737. (1) Except as provided in subsections (2) and (3) of this section, a person who is eligible for or receiving physical health, dental, mental health or chemical dependency services under ORS 414.705 to 414.750 must be enrolled in the prepaid managed care health services organizations to receive the health services for which the person is eligible.

(2) Subsection (1) of this section does not apply to:

(a) A person who is a noncitizen and who is eligible only for labor and delivery services and emergency treatment services;

(b) A person who is an American Indian and Alaskan Native beneficiary; and

(c) A person whom the [*department*] **Oregon Health Authority** may by rule exempt from the mandatory enrollment requirement of subsection (1) of this section, including but not limited to:

(A) A person who is also eligible for Medicare;

(B) A woman in her third trimester of pregnancy at the time of enrollment;

(C) A person under 19 years of age who has been placed in adoptive or foster care out of state;

(D) A person under 18 years of age who is medically fragile and who has special health care needs; and

(E) A person with major medical coverage.

(3) Subsection (1) of this section does not apply to a person who resides in a designated area in which a prepaid managed care health services organization providing physical health, dental, mental health or chemical dependency services is not able to assign an enrollee to a person or entity that is primarily responsible for coordinating the physical health, dental, mental health or chemical dependency services provided to the enrollee.

(4) As used in this section, “American Indian and Alaskan Native beneficiary” means:

(a) A member of a federally recognized Indian tribe, band or group;

(b) An Eskimo or Aleut or other Alaskan Native enrolled by the United States Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601; or

(c) A person who is considered by the United States Secretary of the Interior to be an Indian for any purpose.

SECTION 331. ORS 414.737, as amended by section 8, chapter 751, Oregon Laws 2007, is amended to read:

414.737. (1) Except as provided in subsections (2) and (3) of this section, a person who is eligible for or receiving physical health, dental, mental health or chemical dependency services under ORS 414.705 to 414.750 must be enrolled in the prepaid managed care health services organizations to receive the health services for which the person is eligible.

(2) Subsection (1) of this section does not apply to:

(a) A person who is a noncitizen and who is eligible only for labor and delivery services and emergency treatment services;

(b) A person who is an American Indian and Alaskan Native beneficiary; and

(c) A person whom the [*department*] **Oregon Health Authority** may by rule exempt from the mandatory enrollment requirement of subsection (1) of this section, including but not limited to:

(A) A person who is also eligible for Medicare;

(B) A woman in her third trimester of pregnancy at the time of enrollment;

(C) A person under 19 years of age who has been placed in adoptive or foster care out of state;

(D) A person under 18 years of age who is medically fragile and who has special health care needs;

(E) A person receiving services under the Medically Involved Home-Care Program created by ORS 417.345 (1); and

(F) A person with major medical coverage.

(3) Subsection (1) of this section does not apply to a person who resides in a designated area in which a prepaid managed care health services organization providing physical health, dental, mental health or chemical dependency services is not able to assign an enrollee to a person or entity that is primarily responsible for coordinating the physical health, dental, mental health or chemical dependency services provided to the enrollee.

(4) As used in this section, "American Indian and Alaskan Native beneficiary" means:

(a) A member of a federally recognized Indian tribe, band or group;

(b) An Eskimo or Aleut or other Alaskan Native enrolled by the United States Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601; or

(c) A person who is considered by the United States Secretary of the Interior to be an Indian for any purpose.

SECTION 332. ORS 414.738 is amended to read:

414.738. (1) If the [*Department of Human Services*] **Oregon Health Authority** has not been able to contract with the fully capitated health plan or plans in a designated area, the [*department*] **authority** may contract with a physician care organization in the designated area.

(2) The Office for Oregon Health Policy and Research shall develop criteria that the [*department*] **authority** shall consider when determining the circumstances under which the [*department*] **authority** may contract with a physician care organization. The criteria developed by the office shall include but not be limited to the following:

(a) The physician care organization must be able to assign an enrollee to a person or entity that is primarily responsible for coordinating the physical health services provided to the enrollee;

(b) The contract with a physician care organization does not threaten the financial viability of other fully capitated health plans in the designated area; and

(c) The contract with a physician care organization must be consistent with the legislative intent of using prepaid managed care health services organizations to provide services under ORS 414.705 to 414.750.

SECTION 333. ORS 414.739 is amended to read:

414.739. (1) A fully capitated health plan may apply to the [*Department of Human Services*] **Oregon Health Authority** to contract with the [*department*] **authority** as a physician care organization rather than as a fully capitated health plan to provide services under ORS 414.705 to 414.750.

(2) The Office for Oregon Health Policy and Research shall develop the criteria that the [*department*] **authority** must use to determine the circumstances under which the [*department*] **authority** may accept an application by a fully capitated health plan to contract as a physician care organization. The criteria developed by the office shall include but not be limited to the following:

(a) The fully capitated health plan must show documented losses due to hospital risk and must show due diligence in managing those risks; and

(b) Contracting as a physician care organization is financially viable for the fully capitated health plan.

SECTION 334. ORS 414.740 is amended to read:

414.740. (1) Notwithstanding ORS 414.738 (1), the [*Department of Human Services*] **Oregon Health Authority** shall contract under ORS 414.725 with a prepaid group practice health plan that serves at least 200,000 members in this state and that has been issued a certificate of authority by the Department of Consumer and Business Services as a health care service contractor to provide health services as described in ORS 414.705 (1)(b), (c), (d), (e), (g) and (j). A health plan may also contract with the [*Department of Human Services*] **authority** on a prepaid capitated basis to provide the health services described in ORS 414.705 (1)(k) and (L). The [*Department of Human Services*] **authority** may accept financial contributions from any public or private entity to help implement and administer the contract. The [*Department of Human Services*] **authority** shall seek federal matching funds for any financial contributions received under this section.

(2) In a designated area, in addition to the contract described in subsection (1) of this section, the [Department of Human Services] **authority** shall contract with prepaid managed care health services organizations to provide health services under ORS 414.705 to 414.750.

SECTION 335. ORS 414.741 is amended to read:

414.741. (1) The Health Services Commission shall retain an actuary to determine the benchmark for setting per capita rates necessary to reimburse prepaid managed care health services organizations and fee-for-service providers for the cost of providing health services under ORS 414.705 to 414.750.

(2) The actuary retained by the commission shall use the following information to determine the benchmark for setting per capita rates:

(a) For hospital services, the most recently available Medicare cost reports for Oregon hospitals;
(b) For services of physicians licensed under ORS chapter 677 and other health professionals using procedure codes, the Medicare Resource Based Relative Value system conversion rates for Oregon;

(c) For prescription drugs, the most recent payment methodologies in the fee-for-service payment system for the [Oregon Health Plan] **medical assistance program**;

(d) For durable medical equipment and supplies, 80 percent of the Medicare allowable charge for purchases and rentals;

(e) For dental services, the most recent payment rates obtained from dental care organization encounter data; and

(f) For all other services not listed in paragraphs (a) to (e) of this subsection:

(A) The Medicare maximum allowable charge, if available; or

(B) The most recent payment rates obtained from the data available under subsection (3) of this section.

(3) The actuary shall use the most current encounter data and the most current fee-for-service data that is available, reasonable trends for utilization and cost changes to the midpoint of the next biennium, appropriate differences in utilization and cost based on geography, state and federal mandates and other factors that, in the professional judgment of the actuary, are relevant to the fair and reasonable estimation of costs. The Department of Human Services shall provide the actuary with the data and information in the possession of the department or contractors of the department reasonably necessary to develop a benchmark for setting per capita rates.

(4) The commission shall report the benchmark per capita rates developed under this section to the Director of the Oregon Department of Administrative Services, the Director of [Human Services] **the Oregon Health Authority** and the Legislative Fiscal Officer no later than August 1 of every even-numbered year.

(5) The [Department of Human Services] **Oregon Health Authority** shall retain an actuary to determine:

(a) Per capita rates for health services that the [department] **authority** shall use to develop the [department's] **authority's** proposed biennial budget; and

(b) Capitation rates to reimburse physician care organizations for the cost of providing health services under ORS 414.705 to 414.750 using the same methodologies used to develop capitation rates for fully capitated health plans. The rates may not advantage or disadvantage fully capitated health plans for similar services.

(6) The [Department of Human Services] **Oregon Health Authority** shall submit to the Legislative Assembly no later than February 1 of every odd-numbered year a report comparing the per capita rates for health services on which the proposed budget of the [department] **authority** is based with the rates developed by the actuary retained by the Health Services Commission. If the rates differ, the [department] **authority** shall disclose, by provider categories described in subsection (2) of this section, the amount of and reason for each variance.

SECTION 336. ORS 414.742 is amended to read:

414.742. The [Department of Human Services] **Oregon Health Authority** may not establish capitation rates that include payment for mental health drugs. The [department] **authority** shall reimburse pharmacy providers for mental health drugs only on a fee-for-service payment basis.

SECTION 337. ORS 414.743 is amended to read:

414.743. (1) As used in this section, “fully capitated health plan” means an organization that contracts with the [Department of Human Services] **Oregon Health Authority** on a prepaid capitated basis under ORS 414.725 to provide an adequate network of providers to ensure that all health services described in ORS 414.705 are reasonably accessible to enrollees.

(2) A fully capitated health plan that does not have a contract with a hospital to provide inpatient or outpatient hospital services under ORS 414.705 to 414.750 must pay for hospital services at 80 percent of the Medicare rate for the noncontracting hospital.

(3) A hospital that does not have a contract with a fully capitated health plan to provide inpatient or outpatient hospital services under ORS 414.705 to 414.750 must accept as payment in full the rates described in subsection (2) of this section.

(4) This section does not apply to type A and type B hospitals, as described in ORS 442.470, and rural critical access hospitals, as defined in ORS 315.613.

(5) The [Department of Human Services] **Oregon Health Authority** shall adopt rules to implement and administer this section.

SECTION 338. ORS 414.743, as amended by section 2, chapter 886, Oregon Laws 2007, is amended to read:

414.743. (1) As used in this section, “fully capitated health plan” means an organization that contracts with the [Department of Human Services] **Oregon Health Authority** on a prepaid capitated basis under ORS 414.725 to provide an adequate network of providers to ensure that all health services described in ORS 414.705 are reasonably accessible to enrollees.

(2) A fully capitated health plan that does not have a contract with a hospital to provide inpatient or outpatient hospital services under ORS 414.705 to 414.750 must pay for hospital services as follows:

(a) For inpatient hospital services, based on the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(b) For outpatient hospital services, based on the capitation rates developed for the budget period, at the level of charges multiplied by the statewide average cost-to-charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(3) A hospital that does not have a contract with a fully capitated health plan to provide inpatient or outpatient hospital services under ORS 414.705 to 414.750 must accept as payment in full for hospital services, rates:

(a) For inpatient hospital services, based on the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(b) For outpatient hospital services, based on the capitation rates developed for the budget period, at the level of charges multiplied by the statewide average cost-to-charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) This section does not apply to type A and type B hospitals, as described in ORS 442.470, and rural critical access hospitals, as defined in ORS 315.613.

(5) The [Department of Human Services] **Oregon Health Authority** shall adopt rules to implement and administer this section.

SECTION 339. Section 18, chapter 810, Oregon Laws 2003, is amended to read:

Sec. 18. [(1)] Except as provided in section 19 [of this 2003 Act], **chapter 810, Oregon Laws 2003**, sections 2, 3, 5, 5a, 11, 12, 12a, 14 and 15 [of this 2003 Act], **chapter 810, Oregon Laws 2003**, and the amendments to ORS 414.705 and 414.725 by sections 4 and 7 [of this 2003 Act], **chapter 810, Oregon Laws 2003**, become operative on October 1, 2003.

[2) Sections 10 and 13 of this 2003 Act become operative on the day after the date the Department of Human Services receives the necessary waivers from the Centers for Medicare and Medicaid Services.]

[3) The Director of Human Services shall notify the Legislative Counsel upon receipt of the waivers or denial of the waiver request.]

SECTION 340. ORS 414.750 is amended to read:

414.750. Nothing in ORS [414.036 and] 414.705 to 414.750 is intended to limit the authority of the Legislative Assembly to authorize services for persons whose income exceeds 100 percent of the federal poverty level for whom federal medical assistance matching funds are available if state funds are available therefor.

SECTION 341. ORS 414.751 is amended to read:

414.751. (1) There is established in the [Office for Oregon Health Policy and Research] **Oregon Health Authority** the Office for Oregon Health Policy and Research Advisory Committee composed of members appointed by the Governor. Members shall include:

(a) Representatives of managed care health services organizations under contract with the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 414.725 and serving primarily rural areas of the state;

(b) Representatives of managed care health services organizations under contract with the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 414.725 and serving primarily urban areas of the state;

(c) Representatives of medical organizations representing health care providers under contract with managed care health services organizations pursuant to ORS 414.725 who serve patients in both rural and urban areas of the state; **and**

(d) One representative from Type A hospitals and one representative from Type B hospitals.[: and]

[e) Representatives of the Department of Human Services.]

(2) Members of the advisory committee shall not be entitled to compensation or per diem.

SECTION 342. ORS 414.805 is amended to read:

414.805. (1) An individual who receives medical services while in the custody of a law enforcement officer is liable:

(a) To the provider of the medical services for the charges and expenses therefor; and

(b) To the [Department of Human Services] **Oregon Health Authority** for any charges or expenses paid by the [Department of Human Services] **authority** out of the Law Enforcement Medical Liability Account for the medical services.

(2) A person providing medical services to an individual described in subsection (1)(a) of this section shall first make reasonable efforts to collect the charges and expenses thereof from the individual before seeking to collect them from the [Department of Human Services] **authority** out of the Law Enforcement Medical Liability Account.

(3)(a) If the provider has not been paid within 45 days of the date of the billing, the provider may bill the [Department of Human Services] **authority** who shall pay the account out of the Law Enforcement Medical Liability Account.

(b) A bill submitted to the [Department of Human Services] **authority** under this subsection must be accompanied by evidence documenting that:

(A) The provider has billed the individual or the individual's insurer or health care service contractor for the charges or expenses owed to the provider; and

(B) The provider has made a reasonable effort to collect from the individual or the individual's insurer or health care service contractor the charges and expenses owed to the provider.

(c) If the provider receives payment from the individual or the insurer or health care service contractor after receiving payment from the [Department of Human Services] **authority**, the provider shall repay the [department] **authority** the amount received from the public agency less any difference between payment received from the individual, insurer or contractor and the amount of the billing.

(4) As used in this section:

(a) "Law enforcement officer" means an officer who is commissioned and employed by a public agency as a peace officer to enforce the criminal laws of this state or laws or ordinances of a public agency.

(b) "Public agency" means the state, a city, port, school district, mass transit district or county.

SECTION 343. ORS 414.807 is amended to read:

414.807. (1)(a) When charges and expenses are incurred for medical services provided to an individual for injuries related to law enforcement activity and subject to the availability of funds in the account, the cost of such services shall be paid by the [*Department of Human Services*] **Oregon Health Authority** out of the Law Enforcement Medical Liability Account established in ORS 414.815 if the provider of the medical services has made all reasonable efforts to collect the amount, or any part thereof, from the individual who received the services.

(b) When a law enforcement agency involved with an injury certifies that the injury is related to law enforcement activity, the [*Department of Human Services*] **Oregon Health Authority** shall pay the provider:

(A) If the provider is a hospital, in accordance with current fee schedules established by the Director of the Department of Consumer and Business Services for purposes of workers' compensation under ORS 656.248; or

(B) If the provider is other than a hospital, 75 percent of the customary and usual rates for the services.

(2) After the injured person is incarcerated and throughout the period of incarceration, the [*Department of Human Services*] **Oregon Health Authority** shall continue to pay, out of the Law Enforcement Medical Liability Account, charges and expenses for injuries related to law enforcement activities as provided in subsection (1) of this section. Upon release of the injured person from actual physical custody, the Law Enforcement Medical Liability Account is no longer liable for the payment of medical expenses of the injured person.

(3) If the provider of medical services has filed a medical services lien as provided in ORS 87.555, the [*Department of Human Services*] **Oregon Health Authority** shall be subrogated to the rights of the provider to the extent of payments made by the [*Department of Human Services*] **authority** to the provider for the medical services. The [*Department of Human Services*] **authority** may foreclose the lien as provided in ORS 87.585.

(4) The [*Department of Human Services*] **authority** shall deposit in the Law Enforcement Medical Liability Account all moneys received by the [*department*] **authority** from:

(a) Providers of medical services as repayment;

(b) Individuals whose medical expenses were paid by the [*department*] **authority** under this section; and

(c) Foreclosure of a lien as provided in subsection (3) of this section.

(5) As used in this section:

(a) "Injuries related to law enforcement activity" means injuries sustained prior to booking, citation in lieu of arrest or release instead of booking that occur during and as a result of efforts by a law enforcement officer to restrain or detain, or to take or retain custody of, the individual.

(b) "Law enforcement officer" has the meaning given that term in ORS 414.805.

SECTION 344. ORS 414.815 is amended to read:

414.815. (1) The Law Enforcement Medical Liability Account is established separate and distinct from the General Fund. Interest earned, if any, shall inure to the benefit of the account. The moneys in the Law Enforcement Medical Liability Account are appropriated continuously to the [*Department of Human Services*] **Oregon Health Authority** to pay expenses in administering the account and paying claims out of the account as provided in ORS 414.807.

(2) The liability of the Law Enforcement Medical Liability Account is limited to funds accrued to the account from assessments collected under ORS 137.309 (6), (8) or (9), or collected from individuals under ORS 414.805.

(3) The [Department of Human Services] **authority** may contract with persons experienced in medical claims processing to provide claims processing for the account.

(4) The [Department of Human Services] **authority** shall adopt rules to implement administration of the Law Enforcement Medical Liability Account including, but not limited to, rules that establish reasonable deadlines for submission of claims.

(5) Each biennium, the [Department of Human Services] **Oregon Health Authority** shall submit a report to the Legislative Assembly regarding the status of the Law Enforcement Medical Liability Account. Within 30 days of the convening of each regular legislative session, the [department] **authority** shall submit the report to the chair of the Senate Judiciary Committee and the chair of the House Judiciary Committee. The report shall include, but is not limited to, the number of claims submitted and paid during the biennium and the amount of money in the fund at the time of the report.

SECTION 344a. ORS 414.839 is amended to read:

414.839. (1) Subject to funds available, the [Department of Human Services] **Oregon Health Authority** may provide public subsidies for the purchase of health insurance coverage provided by public programs or private insurance, including but not limited to the Family Health Insurance Assistance Program, for currently uninsured individuals based on incomes up to 200 percent of the federal poverty level. The objective is to create a transition from dependence on public programs to privately financed health insurance.

(2) Public subsidies shall apply only to health benefit plans that meet or exceed the basic benchmark health benefit plan or plans established under ORS 735.733.

(3) Cost sharing shall be permitted and structured in such a manner to encourage appropriate use of preventive care and avoidance of unnecessary services.

(4) Cost sharing shall be based on an individual's ability to pay and may not exceed the cost of purchasing a plan.

(5) The state may pay a portion of the cost of the subsidy, based on the individual's income and other resources.

SECTION 344b. Section 27, chapter 697, Oregon Laws 2007 is amended to read:

Sec. 27. Sections 1 to 13, chapter 697, Oregon Laws 2007, [of this 2007 Act] are repealed [on January 2, 2010].

SECTION 344c. The balance of moneys remaining in the Oregon Health Fund on the effective date of this 2009 Act shall be transferred to the Oregon Health Authority Fund established in section 18 of this 2009 Act.

SECTION 345. ORS 416.430 is amended to read:

416.430. (1) The administrator may establish paternity of a child in the course of a support proceeding under ORS 416.400 to 416.465 when both parents sign statements that paternity has not been legally established and that the male parent is the father of the child. The administrator may enter an order which establishes paternity.

(2) If the parent fails to file a response denying paternity and requesting a hearing within the time period allowed in ORS 416.415 (2), then the administrator, without further notice to the parent, may enter an order, in accordance with ORS 416.415 (7), which declares and establishes the parent as the legal father of the child.

(3) Any order entered pursuant to subsection (1) or (2) of this section establishes legal paternity for all purposes. The Center for Health Statistics of the [Department of Human Services] **Oregon Health Authority** shall prepare a new birth certificate in the new name, if any, of the child. The original birth certificate shall be sealed and filed and may be opened only upon order of a court of competent jurisdiction.

(4)(a) If paternity is alleged under ORS 416.415 (3) and a written response denying paternity and requesting a hearing is received within the time period allowed in ORS 416.415 (2), or if the administrator determines that there is a valid issue with respect to paternity of the child, the administrator, subject to the provisions of subsections (5) and (6) of this section, shall certify the matter to the circuit court for a determination based upon the contents of the file and any evidence which

may be produced at trial. The proceedings in court shall for all purposes be deemed suits in equity. The provisions of ORS 109.145 to 109.230 apply to proceedings certified to court by the administrator pursuant to this section.

(b) Any response denying paternity and requesting a hearing shall be sent by the enforcement office to the obligee by regular mail.

(5) An action to establish paternity initiated under ORS 416.400 to 416.465 shall not be certified to court for trial unless all of the following have occurred:

(a) Blood tests have been conducted;

(b) The results of the blood tests have been served upon the parties and notice has been given that an order establishing paternity will be entered unless a written objection is received within 30 days; and

(c) A written objection to the entry of an order has been timely received from a party.

(6) Notwithstanding the provisions of subsection (5) of this section, the administrator:

(a) Shall certify the matter to court:

(A) Within 30 days of receipt by the administrator of a timely written objection to the entry of an order by a party under subsection (5)(c) of this section;

(B) When a party requests certification in writing after the administrator has received a party's written denial of paternity if at least 120 days have elapsed from receipt of the denial; or

(C) Upon receipt of blood test results with a cumulative paternity index of less than 99; and

(b) May certify the matter to court at any time under any other circumstances.

(7) If the blood tests conducted under ORS 109.250 to 109.262 result in a cumulative paternity index of 99 or greater, evidence of the tests, together with the testimony of the parent, shall be a sufficient basis upon which to establish paternity and the administrator may enter an order declaring the alleged father as the legal father of the child unless a party objects in writing to the entry of the order. The testimony of the parent may be presented by affidavit.

(8) Prior to certification to court, the administrator may attempt to resolve the issue of paternity by discovery conducted under the Oregon Rules of Civil Procedure. Unless otherwise specifically provided by statute, the proceedings shall be conducted under the Oregon Rules of Civil Procedure.

(9) When, in accordance with subsection (6)(a)(A) of this section, a party objects to the entry of an order and the blood tests conducted under ORS 109.250 to 109.262 result in a cumulative paternity index of 99 or greater, notwithstanding the party's objection, evidence of the tests, together with the testimony of a parent, is a sufficient basis upon which to presume paternity for purposes of establishing temporary support under this section. The court shall, upon motion of any party, enter a temporary order requiring the alleged father to provide support pending the determination of parentage by the court. In determining the amount of support, the court shall use the formula established under ORS 25.275.

SECTION 346. ORS 416.510 is amended to read:

416.510. As used in ORS 416.510 to 416.610, unless the context requires otherwise:

(1) "Action" means an action, suit or proceeding.

(2) "Applicant" means an applicant for assistance.

(3) "Assistance" means moneys paid by the Department of Human Services to persons directly and moneys paid by the [department] **Oregon Health Authority** or by a prepaid managed care health services organization for services provided under contract pursuant to ORS 414.725 to others for the benefit of such persons.

(4) "**Authority**" means the **Oregon Health Authority**.

[(4)] (5) "Claim" means a claim of a recipient of assistance for damages for personal injuries against any person or public body, agency or commission other than the State Accident Insurance Fund Corporation or Workers' Compensation Board.

[(5)] (6) "Compromise" means a compromise between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

[(6)] "*Department*" means the *Department of Human Services*.]

(7) "Judgment" means a judgment in any action or proceeding brought by a recipient to enforce the claim of the recipient.

(8) "Prepaid managed care health services organization" means a managed health, dental or mental health care organization that contracts with the [Department of Human Services] **authority** on a prepaid capitated basis [under the Oregon Health Plan] pursuant to ORS 414.725. Prepaid managed care health services organizations may be dental care organizations, fully capitated health plans, mental health organizations or chemical dependency organizations.

(9) "Recipient" means a recipient of assistance.

(10) "Settlement" means a settlement between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

SECTION 347. ORS 416.530 is amended to read:

416.530. [When] (1) If any applicant or recipient makes a claim or, without making a claim, begins an action to enforce such claim, the applicant or recipient, or the attorney for the applicant or the recipient, shall immediately notify the Department of Human Services **or the Oregon Health Authority** and the recipient's prepaid managed care health services organization, if the recipient is receiving services from the organization. If an applicant or recipient, or the attorney for the applicant or the recipient, has given notice that the applicant or recipient has made a claim, it shall not be necessary for the applicant or recipient, or the attorney for the applicant or the recipient, to give notice that the applicant or recipient has begun an action to enforce such claim. The notification shall include the name and address of each person or public body, agency or commission against whom claim is made or action is brought. If claim is made or action is brought against a corporation, the address given in such notification shall be that of its principal place of business. If the applicant or recipient is a minor, the parents, legal guardian or foster parents of the minor shall give the notification required by this section.

(2) The notification required by subsection (1) of this section shall be provided to:

(a) The Oregon Health Authority by applicants for or recipients of assistance provided by the authority; and

(b) The Department of Human Services for assistance provided by the department.

SECTION 348. ORS 416.540 is amended to read:

416.540. (1) Except as provided in subsection (2) of this section and in ORS 416.590, the Department of Human Services **and the Oregon Health Authority** shall have a lien upon the amount of any judgment in favor of a recipient or amount payable to the recipient under a settlement or compromise for all assistance received by such recipient from the date of the injury of the recipient to the date of satisfaction of such judgment or payment under such settlement or compromise.

(2) The lien does not attach to the amount of any judgment, settlement or compromise to the extent of attorney's fees, costs and expenses incurred by a recipient in securing such judgment, settlement or compromise and to the extent of medical, surgical and hospital expenses incurred by the recipient on account of the personal injuries for which the recipient had a claim.

(3) The [department] **authority** may assign the lien described in subsection (1) of this section to a prepaid managed care health services organization for medical costs incurred by a recipient:

(a) During a period for which the [department] **authority** paid a capitation or enrollment fee; and

(b) On account of the personal injury for which the recipient had a claim.

(4) A prepaid managed care health services organization to which the [department] **authority** has assigned a lien shall notify the [department] **authority** no later than 10 days after filing notice of a lien.

(5) For the purposes of ORS 416.510 to 416.610, the [department] **authority** may designate the prepaid managed care health services organization to which a lien is assigned as its designee.

(6) If the [department] **authority** and a prepaid managed care health services organization both have filed a lien, the [department's] **authority's** lien shall be satisfied first.

SECTION 349. ORS 416.550 is amended to read:

416.550. (1) Upon receiving notice under ORS 416.530, to perfect its lien the Department of Human Services **or the Oregon Health Authority** shall:

(a) File a notice of lien, substantially in the form prescribed in ORS 416.560, with the recording officer of the county in which the person against whom claim is made or action is brought resides. If the claim or action is against a corporation, the notice of lien shall be filed with the recording officer of the county within the state in which such corporation has its principal place of business. If the claim or action is against a public body, agency or commission, the notice of lien shall be filed with the recording officer of the county in which the public body, agency or commission has its main offices; and

(b) Prior to the date of satisfaction of the judgment or payment under the settlement or compromise, send a certified copy of the notice of lien by registered mail or by certified mail with return receipt to each person or public body, agency or commission against whom claim is made or action is brought by the recipient.

(2) Upon the filing of a notice of lien by the department **or the authority**, the recording officer shall enter the name of the injured person, the approximate date of the injury and the name of the department **or the authority** as lienor in the hospital lien docket provided for in ORS 87.575 and shall make an index thereto in the names of the injured persons and the department **or the authority**.

SECTION 350. ORS 416.560 is amended to read:

416.560. The form of the notice required by ORS 416.550 (1) shall be substantially as follows:

Notice is hereby given that the [*Department of Human Services*] _____ has rendered assistance to _____, a person who was injured on or about the ____ day of _____ in the city of _____ and State of _____, and the [*Department of Human Services*] _____ hereby asserts a lien to the extent provided in ORS 416.510 to 416.610, for the amount of such assistance upon any amount due and owing _____ (name of injured person) under a judgment, settlement or compromise from _____ alleged to have caused such injuries and from any other person or public body, agency or commission liable for the injury or obligated to compensate the injured person on account of such injuries.

Department of Human Services/**Oregon Health Authority**
by _____,
Director of [*Human Services*] _____ or designee.

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn on oath say: That I am the Director of [*Human Services*] _____ or designee; that I have read the foregoing notice of lien and know the contents thereof and believe the same to be true.

Subscribed and sworn to before me this ____ day of _____, _____,
_____, Notary Public.

SECTION 351. ORS 416.570 is amended to read:

416.570. Immediately after a judgment has been rendered in favor of a recipient or a settlement or compromise has been agreed upon, the person or public body, agency or commission bound by such judgment, settlement or compromise shall notify the Department of Human Services **or the Oregon Health Authority**. After such notification the department **or the authority** shall send a statement of the amount of its lien to such person or public body, agency or commission by registered mail or by certified mail with return receipt.

SECTION 352. ORS 416.580 is amended to read:

416.580. (1) After a notice of lien is filed in the manner provided in ORS 416.550 (2), any person or public body, agency or commission who makes any payment to the injured recipient, the heirs, personal representatives or assigns of the recipient, or their attorneys, under a judgment, settlement or compromise without previously having paid to the Department of Human Services **or the Oregon Health Authority** the amount of its lien, shall be liable to the State of Oregon, for the use and benefit of the department **or the authority** for a period of 180 days after the date of such payment for the amount of such payment to the extent that the lien attached thereto under ORS 416.540.

(2) Any amount paid to the department **or the authority** in satisfaction of its lien shall be distributed by the department **or the authority** to the United States Government and the Public Welfare Account, as their interests may appear.

(3) If the recipient is a minor, no payments to the department **or the authority** in satisfaction of its lien and, except to the extent of the fees, costs and expenses specified in ORS 416.540 (2), no payments to the recipient under a judgment, settlement or compromise shall be made until a hearing has taken place and the court has issued its order under ORS 416.590.

SECTION 353. ORS 416.590 is amended to read:

416.590. (1) If the recipient is a minor, after the date on which a judgment in favor of the recipient is rendered or settlement or compromise is agreed upon, the guardian of the minor or the conservator of the estate of the minor shall petition the court having probate jurisdiction in the county in which the guardian or conservator was appointed to determine the sum that will be needed for the minor's complete physical rehabilitation. If the guardian or the conservator of the minor's estate fails to petition the court, any other interested person or public body, agency or commission may file the petition. The lien of the Department of Human Services **or the Oregon Health Authority** provided for in ORS 416.510 to 416.610 shall not attach to the amount of the judgment, settlement or compromise to the extent of the sum needed for the rehabilitation. Among other data, the petition shall contain the name and address of each person or public body, agency or commission liable to the minor under the judgment, settlement or compromise.

(2) The court shall conduct a hearing to determine the sum that will be needed by the minor and at least 10 days prior to the date of the hearing, the clerk of the court shall notify the conservator of the minor's estate, the department **or the authority** and the person who filed the petition, if the person is someone other than the guardian or the conservator of the minor's estate, of the date on which the hearing will be held. At the hearing any interested person as well as witnesses for the minor and for the department **or the authority** may testify on the question before the court. Upon reaching a decision, the court shall issue an order setting forth the decision and the clerk of the court shall enter the order in an appropriate record book. The clerk shall also send a copy of the order to the guardian or the conservator of the minor's estate, the person who filed the petition if the person is someone other than the guardian or the conservator of the minor's estate, the department **or the authority** and to each person or public body, agency or commission liable to the minor under the judgment, settlement or compromise.

SECTION 354. ORS 416.600 is amended to read:

416.600. When the Department of Human Services **or the Oregon Health Authority** determines that a recipient will incur additional medical, surgical or hospital expenses or that additional assistance will have to be given to the recipient after the date of satisfaction of judgment or payment under a settlement or compromise, the department **or the authority** may release any portion of its lien to the extent of such anticipated expenses and assistance.

SECTION 355. ORS 416.610 is amended to read:

416.610. The [Department of Human Services] **Oregon Health Authority** or the recipient's prepaid managed care health services organization, if the recipient is receiving services from the organization, shall have a cause of action against any recipient who fails to give the notification required by ORS 416.530 for amounts received by the recipient pursuant to a judgment, settlement or compromise to the extent that the department **or the authority** or the prepaid managed care health services organization could have had a lien against such amounts had such notice been given.

SECTION 356. ORS 416.990 is amended to read:

416.990. Any person who makes, renders, signs or verifies any false or fraudulent statement, or supplies any false or fraudulent information with intent to evade any lawful requirement of the Department of Human Services **or the Oregon Health Authority** is guilty of a misdemeanor.

NOTE: Section 357 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 358. ORS 417.346 is amended to read:

417.346. Subject to the availability of funds therefor, the Director of Human Services, **in consultation with the Director of the Oregon Health Authority**, shall:

(1) Identify current programs and potential resources available to families providing care for a family member with a disability or chronic illness.

(2) Develop a biennial plan for adequate funding and recommend budgetary priorities for family support services.

(3) Develop a biennial cooperative plan for assuring a statewide interagency system of family support services.

(4) Adopt rules for family support services that are guided by the goals and principles set forth in ORS 417.340 to 417.348. These rules shall contain a grievance procedure.

(5) Make a biennial report to the Legislative Assembly on the state of the family support system, including strengths, deficiencies, cost savings and recommendations. This report shall include a comprehensive statement of the efforts of the Department of Human Services to carry out the policies and principles set forth in this legislation. The report shall include but not be limited to a list of family support services, a summary of costs and the number of clients served.

(6) Establish a Family Support Advisory Council whose purpose is to review and comment on plans and services provided or contracted for family support by state agencies and advise the director on the state plans for coordinated family support services.

(a) The council shall meet a minimum of four times per year.

(b) The membership of the council shall be 51 percent consumers of family support services.

(c) The remaining membership shall be composed of representatives of agencies providing family support services and representatives of advocacy groups. One member shall be a representative of the Department of Education.

SECTION 359. ORS 417.728 is amended to read:

417.728. (1) The State Commission on Children and Families, the Department of Education, the Employment Department, [and] the Department of Human Services **and the Oregon Health Authority** shall lead a joint effort with other state and local early childhood partners to establish the policies necessary for a voluntary statewide early childhood system that shall be incorporated into the local coordinated comprehensive plan.

(2) The voluntary statewide early childhood system shall be designed to achieve:

(a) The appropriate early childhood benchmarks jointly identified by the State Commission on Children and Families, the Department of Education, the Employment Department, [and] the Department of Human Services **and the Oregon Health Authority**, with input from early childhood partners, as the appropriate benchmarks; and

(b) Any other early childhood benchmark or intermediate outcome jointly identified by the State Commission on Children and Families, the Department of Education, the Employment Department, [and] the Department of Human Services **and the Oregon Health Authority**, with input from early childhood partners, as an appropriate benchmark or outcome.

(3) The voluntary statewide early childhood system shall include the following components:

(a) A process to identify as early as possible children and families who would benefit from early childhood services;

(b) A plan to support the identified needs of the child and family that coordinates case management personnel and the delivery of services to the child and family; and

(c) Services to support children who are zero through eight years of age and their families who give their express written consent, including:

(A) Screening, assessment and home visiting services pursuant to ORS 417.795;

- (B) Specialized or targeted home visiting services;
- (C) Community-based services such as relief nurseries, family support programs and parent education programs;
- (D) High quality child care, as defined by the Commission for Child Care;
- (E) Preschool and other early education services;
- (F) Health services for children and pregnant women;
- (G) Mental health services;
- (H) Alcohol and drug treatment programs that meet the standards promulgated by the [*Department of Human Services*] **Oregon Health Authority** pursuant to ORS 430.357;
- (I) Developmental disability services; and
- (J) Other state and local services.

(4) The State Commission on Children and Families, the Department of Education, the Employment Department, [*and*] the Department of Human Services **and the Oregon Health Authority** shall jointly:

(a) Consolidate administrative functions relating to the voluntary statewide early childhood system, to the extent practicable, including but not limited to training and technical assistance, planning and budgeting. This paragraph does not apply to the administrative functions of the Department of Education relating to education programs;

(b) Adopt policies to establish training and technical assistance programs to ensure that personnel have skills in appropriate areas, including screening, family assessment, competency-based home visiting skills, cultural and gender differences and other areas as needed;

(c) Identify research-based age-appropriate and culturally and gender appropriate screening and assessment tools that would be used as appropriate in programs and services of the voluntary statewide early childhood system;

(d) Develop a plan for the implementation of a common data system for voluntary early childhood programs as provided in section 7, chapter 831, Oregon Laws 2001;

(e) Coordinate existing and new early childhood programs to provide a range of community-based supports;

(f) Establish a common set of quality assurance standards to guide local implementation of all elements of the voluntary statewide early childhood system, including voluntary universal screening and assessment, home visiting, staffing, evaluation and community-based services;

(g) Ensure that all plans for voluntary early childhood services are coordinated and consistent with federal and state law, including but not limited to plans for Oregon prekindergarten programs, federal Head Start programs, early childhood special education services, early intervention services and public health services;

(h) Identify how the voluntary statewide early childhood system for children who are zero through eight years of age will link with systems of support for older children and their families;

(i) Contract for an evaluation of the outcomes of the voluntary statewide early childhood system; and

(j) During January of each odd-numbered year, report to the Governor and the Legislative Assembly on the voluntary statewide early childhood system. The report shall include the evaluation described in paragraph (i) of this subsection.

(5) The State Commission on Children and Families, the State Board of Education, the Employment Department, [*and*] the Department of Human Services **and the Oregon Health Authority** when adopting rules to administer voluntary early childhood programs under their individual authority shall adopt rules that are consistent with the requirements of the voluntary statewide early childhood system created under this section.

(6) Information gathered in conjunction with the voluntary comprehensive screening and assessment of children and their families may be used only for the following purposes:

- (a) Providing services to children and families who give their express written consent;
- (b) Providing statistical data that are not personally identifiable;
- (c) Accomplishing other purposes for which the family has given express written consent; and

(d) Meeting the requirements of mandatory state and federal disclosure laws.

SECTION 360. ORS 417.730 is amended to read:

417.730. (1) There is established a State Commission on Children and Families consisting of:

(a) The Director of Human Services;

(b) The Superintendent of Public Instruction;

(c) The Director of the Employment Department or, at the Governor's direction, the chairperson of the Commission for Child Care;

(d) The Director of the Oregon Health Authority;

[(d)] (e) One member appointed by the President of the Senate, who shall be a member of the Senate and who shall be a nonvoting, advisory member;

[(e)] (f) One member appointed by the Speaker of the House of Representatives, who shall be a member of the House of Representatives and who shall be a nonvoting, advisory member; and

[(f)] (g) Twelve members appointed by the Governor.

(2) The appointments made by the Governor shall reflect the state's diverse populations and regions and shall include representatives with expertise along the full developmental continuum of a child from the prenatal stage through 18 years of age. The members appointed by the Governor shall include:

(a) One representative from the Oregon Juvenile Department Directors' Association, from which the Governor may solicit suggestions for appointment;

(b) Six public members who have demonstrated interest in children, with consideration given to a youth member and persons from the education community;

(c) Two members from local commissions on children and families, one from a rural area and one from an urban area;

(d) One social service professional; and

(e) Two members from the business community who have demonstrated interest in children.

(3) The term of office of each member appointed by the Governor is four years. Before the expiration of the term of an appointed member, the Governor shall appoint a successor whose term begins on October 1. An appointed member is eligible for reappointment. If there is a vacancy in an appointed position for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The appointments by the Governor to the state commission are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(5) An appointed member of the state commission who is not a member of the Legislative Assembly is entitled to compensation and expenses as provided in ORS 292.495. Members who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(6)(a) The majority of the members of the state commission shall be laypersons.

(b) As used in this subsection, "layperson" means a person whose primary income is not derived from either offering direct service to children and youth or being an administrator for a program for children and youth.

SECTION 361. ORS 417.735 is amended to read:

417.735. (1) The State Commission on Children and Families shall promote the wellness of children and families at the state level and shall act in accordance with the principles, characteristics and values identified in ORS 417.708 to 417.725. The state commission shall provide no direct services.

(2)(a) Funds for local commissions shall consist of payments from moneys appropriated for local commissions to the State Commission on Children and Families by the Legislative Assembly. The state commission shall develop an equitable formula for the distribution of funds to counties or regions for services for children and families, and a minimum annual grant shall be provided to each county or region.

(b) The state commission shall provide technical assistance and research-based information to local commissions to support the development of county goals, performance measures and outcomes for services and programs.

(c) The state commission may withhold funds from a local commission if services and programs funded through the local commission do not meet appropriate performance measures and outcomes.

(3) The state commission shall:

(a) Set guidelines for the planning, coordination and delivery of services by local commissions in partnership with other planning bodies and agencies providing services for children and families. The guidelines shall be consistent with the key elements of the service system developed and implemented under ORS 417.705 to 417.801. In conjunction with other planning bodies and agencies providing social supports, the state commission shall use the local coordinated comprehensive plans to advise agencies, the Legislative Assembly and the Governor;

(b) Advise the Legislative Assembly and the Governor concerning possible solutions to problems facing children and families;

(c) In consultation with other agencies, identify high-level and intermediate outcomes relating to children and families and monitor the progress of local coordinated comprehensive plans in meeting intermediate outcome targets;

(d) Encourage the development of innovative projects, based on proven practices of effectiveness, that benefit children and families;

(e) Ensure that all services for children and families are integrated and evaluated according to their outcomes;

(f) Compile, analyze and distribute information that informs and supports statewide coordinated planning;

(g) Establish a uniform system of reporting and collecting statistical data from counties and other agencies serving children and families;

(h) Provide a process whereby the Department of Human Services, **Oregon Health Authority**, Juvenile Crime Prevention Advisory Committee, Oregon Youth Authority, Department of Education, Department of Community Colleges and Workforce Development, Employment Department, Housing and Community Services Department and Economic and Community Development Department review all findings from data collected by the local commissions through the local coordinated comprehensive plans. The information gathered in this review shall be considered by those agencies in designing future economic resources and services and in the coordination of services;

(i) Make recommendations to the Commission for Child Care for the development of the state's biennial child care plan; and

(j) Communicate information and policy advice on current research and proven practices of effectiveness, from both inside and outside the state, including successful local strategies, to local commissions, the Governor, the Legislative Assembly, state agencies and the public. The information shall include progress in meeting intermediate outcome targets identified in the local coordinated comprehensive plans.

(4)(a) The state commission shall develop a review and approval process for local coordinated comprehensive plans that includes:

(A) A requirement that the local plan has been approved by the board or boards of county commissioners;

(B) Assurance that the local plan meets essential criteria and approval required by appropriate entities and meets appropriate systems and planning connections; and

(C) Review of state expenditures of resources allocated to the local commissions on children and families.

(b) The state commission shall develop the process under this subsection in consultation with other entities involved in the review and approval process.

(c) The state commission shall act on any waiver request from a local commission within 90 days after receipt of the request.

(d) The state commission may disapprove a local plan for failure to address the elements described in paragraph (a) of this subsection within 90 days after receipt of the request.

(5) The state commission, in coordination with the local commissions on children and families, shall:

(a) Assist the local commissions in the development and implementation of performance measures and outcomes for evaluating services at the local level;

(b) Monitor the progress in meeting intermediate outcome targets in the local coordinated comprehensive plans;

(c) In conjunction with the Department of Human Services and using the staff resources and other resources of the state commission, educate, inform and provide technical assistance to local commissions, including but not limited to technical assistance with:

(A) Federal and state laws, regulations and rules, and changes therein, governing the use of federal and state funds;

(B) Facilitation;

(C) Planning;

(D) Policy development;

(E) Proven practices of effectiveness;

(F) Local systems development;

(G) Community problem solving and mobilization; and

(H) Other services, as appropriate;

(d) Conduct research and disseminate information to local commissions on children and families;

(e) Negotiate federal waivers in consultation with the Department of Human Services; and

(f) Develop a process for reviewing requests for waivers from requirements of the state commission. Requests for waivers shall be granted or denied as a part of the approval process for a local coordinated comprehensive plan. The state commission shall not grant a request for waiver that allows funds to be used for any purpose other than early childhood prevention, intervention and treatment programs.

(6) The state commission shall employ a staff director who shall be responsible for hiring and supervising any additional personnel necessary to assist the state commission in performing its duties. The staff director shall be responsible for management functions of the state commission subject to policy direction by the state commission.

(7) To the extent that federal funding is not jeopardized, the State Commission on Children and Families shall enter into an interagency agreement with the Department of Human Services in which they agree on a system to:

(a) Distribute all Title XX Social Services Block Grant funds;

(b) Ensure that federal and state requirements are met for federal funds administered by the state commission; and

(c) Carry out the necessary auditing, monitoring and information requirements for federal funds distributed by the state commission.

(8) In addition to the authority under subsection (5)(e) of this section, the state commission may direct the Department of Human Services or the appropriate state department providing services for children and families to negotiate federal waivers. If the Department of Human Services or any other state agency does not pursue a federal waiver recommended by the state commission, the state commission may ask the Governor to direct the Department of Human Services or other state agency to apply for and negotiate the waiver.

(9) If the Department of Human Services or any other state agency refuses to distribute state or federal funds as requested by the state commission, the state commission may ask the Governor to direct the Department of Human Services or other state agency to distribute the funds.

(10) The programs shall be funded as fully as possible by Title XX of the federal Social Security Act, consistent with the terms and conditions of the block grant program and the local coordinated comprehensive plans that reflect community priorities established by the local planning process.

(11) In conjunction with the Department of Human Services, the state commission, as soon as possible, shall develop a plan to re-engineer and integrate the data processing systems related to children's programs with the objective of making management information more accessible. The state commission shall make regular presentations to the Joint Legislative Committee on Information Management and Technology on its progress in developing and implementing the plan.

(12) Before each regular session of the Legislative Assembly, the state commission shall report, to the Governor and to the appropriate joint interim committee as determined by the Speaker of the House of Representatives and the President of the Senate, the following:

(a) Any additional proposals contained in "A Positive Future for Oregon's Children and Families" by the 1991-1992 Oregon Children's Care Team Interim Task Force that should be undertaken;

(b) The status in all counties of local service systems related to the health and wellness of children and the adequacy of financial resources to deliver services;

(c) The progress in achieving desired outcomes, including but not limited to the statewide guidelines set by the state commission under ORS 417.710 (1);

(d) Barriers to achieving intermediate and high-level outcome targets as identified in local coordinated comprehensive plans;

(e) Proposed solutions to barriers identified under paragraph (d) of this subsection, including proven, effective and innovative strategies; and

(f) County and community mobilization to increase public awareness and involvement and funding of community determined priorities.

(13)(a) The state commission may solicit, accept and receive federal moneys or moneys or other property from persons or corporations, public or private, for the purpose of carrying out the provisions of ORS 417.705 to 417.801 and 419A.170.

(b) All federal moneys collected or received under paragraph (a) of this subsection shall be accepted and transferred or expended by the state commission upon such terms and conditions as are prescribed by the federal government.

(c) All moneys and other property accepted by the state commission under this subsection shall be transferred, expended or used upon such terms and conditions as are prescribed by the donor in a manner consistent with applicable law.

(14) The state commission shall:

(a) Implement the recommendations of the Juvenile Crime Prevention Advisory Committee, as approved by the Governor; and

(b) In cooperation with other state and federal agencies, coordinate technical assistance efforts on a statewide and county-specific basis relating to juvenile crime prevention programs and services.

(15) The state commission may contract with local governments or other entities to administer juvenile crime prevention programs and services. In accordance with the applicable provisions of ORS chapter 183, the state commission may adopt rules necessary for the administration of juvenile crime prevention programs and services.

SECTION 362. ORS 417.795 is amended to read:

417.795. (1) The State Commission on Children and Families established under ORS 417.730 shall establish Healthy Start Family Support Services programs through contracts entered into by local commissions on children and families in all counties of this state as funding becomes available.

(2) These programs shall be nonstigmatizing, voluntary and designed to achieve the appropriate early childhood benchmarks and shall:

(a) Ensure that express written consent is obtained from the family prior to any release of information that is protected by federal or state law and before the family receives any services;

(b) Ensure that services are voluntary and that, if a family chooses not to accept services or ends services, there are no adverse consequences for those decisions;

(c) Offer a voluntary comprehensive screening and risk assessment of all newly born children and their families;

(d) Ensure that the disclosure of information gathered in conjunction with the voluntary comprehensive screening and risk assessment of children and their families is limited pursuant to ORS 417.728 (6) to the following purposes:

(A) Providing services under the programs to children and families who give their express written consent;

(B) Providing statistical data that are not personally identifiable;

(C) Accomplishing other purposes for which the family has given express written consent; and

(D) Meeting the requirements of mandatory state and federal disclosure laws;

(e) Ensure that risk factors used in the risk assessment are limited to those risk factors that have been shown by research to be associated with poor outcomes for children and families;

(f) Identify, as early as possible, families that would benefit most from the programs;

(g) Provide parenting education and support services, including but not limited to community-based home visiting services and primary health care services;

(h) Provide other supports, including but not limited to referral to and linking of community and public services for children and families such as mental health services, alcohol and drug treatment programs that meet the standards promulgated by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 430.357, child care, food, housing and transportation;

(i) Coordinate services for children consistent with the voluntary local early childhood system plan developed pursuant to ORS 417.777;

(j) Provide follow-up services and supports from birth through five years of age;

(k) Integrate data with any common data system for early childhood programs implemented pursuant to section 7, chapter 831, Oregon Laws 2001;

(L) Be included in a statewide independent evaluation to document:

(A) Level of screening and assessment;

(B) Incidence of child abuse and neglect;

(C) Change in parenting skills; and

(D) Rate of child development;

(m) Be included in a statewide training program in the dynamics of the skills needed to provide early childhood services, such as assessment and home visiting; and

(n) Meet voluntary statewide and local early childhood system quality assurance and quality improvement standards.

(3) The Healthy Start Family Support Services programs, local health departments and other providers of prenatal and perinatal services in counties, as part of the voluntary local early childhood system, shall:

(a) Identify existing services and describe and prioritize additional services necessary for a voluntary home visit system;

(b) Build on existing programs;

(c) Maximize the use of volunteers and other community resources that support all families;

(d) Target, at a minimum, all first birth families in the county; and

(e) Ensure that home visiting services provided by local health departments for children and pregnant women support and are coordinated with local Healthy Start Family Support Services programs.

(4) Through a Healthy Start Family Support Services program, a trained family support worker or nurse shall be assigned to each family assessed as at risk that consents to receive services through the worker or nurse. The worker or nurse shall conduct home visits and assist the family in gaining access to needed services.

(5) The services required by this section shall be provided by hospitals, public or private entities or organizations, or any combination thereof, capable of providing all or part of the family risk assessment and the follow-up services. In granting a contract, a local commission may utilize collaborative contracting or requests for proposals and shall take into consideration the most effective and consistent service delivery system.

(6) The family risk assessment and follow-up services for families at risk shall be provided by trained family support workers or nurses organized in teams supervised by a manager and including a family services coordinator who is available to consult.

(7) Each Healthy Start Family Support Services program shall adopt disciplinary procedures for family support workers, nurses and other employees of the program. The procedures shall provide appropriate disciplinary actions for family support workers, nurses and other employees who violate federal or state law or the policies of the program.

SECTION 363. ORS 417.845 is amended to read:

417.845. (1) The Juvenile Crime Prevention Advisory Committee is created within the State Commission on Children and Families.

(2) The committee shall have the following members:

(a) The Director of the Oregon Youth Authority or a designee of the director;

(b) The staff director of the State Commission on Children and Families or a designee of the staff director;

(c) The Director of [*Human Services*] **the Oregon Health Authority** or one or more designees of the director, one of whom has expertise in treatment and prevention of substance abuse;

(d) The executive director of the Oregon Criminal Justice Commission or a designee of the executive director;

(e) The Superintendent of Public Instruction or a designee of the superintendent;

(f) The Superintendent of State Police or a designee of the superintendent;

(g) The Director of the Department of Corrections or a designee of the director;

(h) One designee of the Governor;

(i) One member appointed by the President of the Senate, who shall be a member of the Senate and who shall be a nonvoting, advisory member;

(j) One member appointed by the Speaker of the House of Representatives, who shall be a member of the House of Representatives and who shall be a nonvoting, advisory member; and

(k) One designee of the Chief Justice of the Supreme Court from the Judicial Department who serves as a nonvoting member to provide information and support the partnership role of the courts in an effective comprehensive statewide approach to high-risk youth and their families.

(3) In addition to the members listed in subsection (2) of this section, the Governor shall appoint the following members who shall be representative of the geographic and cultural diversity of the state:

(a) To represent local public and private entities:

(A) A county commissioner;

(B) A local juvenile director;

(C) A director of a local commission on children and families;

(D) Two law enforcement officials;

(E) A county mental health director;

(F) An alcohol and drug abuse professional;

(G) A school superintendent;

(H) A private youth service provider; and

(I) An elected city official;

(b) A researcher;

(c) A citizen member; and

(d) Other members as determined by the Governor.

(4) Each member of the committee appointed by the Governor under subsection (3) of this section shall serve a term of four years. Members appointed by the Governor shall serve at the pleasure of the Governor. A vacancy in the office of any member appointed by the Governor under subsection (3) of this section shall be filled by the Governor by appointment for the unexpired term.

(5) The Governor shall select one of the members of the committee as chairperson and one of its members as vice chairperson.

(6) The committee shall meet at times, places and intervals deemed advisable by a majority of the members.

(7) The State Commission on Children and Families shall provide staff support to the committee.

SECTION 363a. ORS 418.704 is amended to read:

418.704. There is established a Youth Suicide Prevention Coordinator within the [*Department of Human Services*] **Oregon Health Authority**. The coordinator shall:

(1) Facilitate the development of a statewide strategic plan to address youth suicide;

(2) Improve outreach to special populations of youth that are at risk for suicide; and

(3) Provide technical assistance to state and local partners and coordinate interagency efforts to establish prevention and intervention strategies.

SECTION 363b. ORS 418.706 is amended to read:

418.706. The State Technical Assistance Team for child fatalities is established in the [*Department of Human Services*] **Oregon Health Authority**. The purpose of the State Technical Assistance Team is to provide staff support for the statewide interdisciplinary team, as described in ORS 418.748, and, upon request, to provide technical assistance to the child fatality review teams established under ORS 418.785. The duties of the State Technical Assistance Team shall include but are not limited to:

(1) Designing, implementing and maintaining an information management system for child fatalities;

(2) Providing training assistance and support for identified individuals on county multidisciplinary child abuse teams in accurate data collection and input;

(3) Compiling and analyzing data on child fatalities;

(4) Using data concerning child deaths to identify strategies for the prevention of child fatalities and serving as a resource center to promote the use of the strategies at the county level; and

(5) Upon request of a county multidisciplinary child abuse team, providing technical assistance and consultation services on a variety of issues related to child fatalities including interagency agreements, team building, case review and prevention strategies.

SECTION 364. ORS 419B.005 is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are defined in ORS chapter 163.

(D) Sexual abuse, as defined in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Dentist.

(c) School employee.

(d) Licensed practical nurse or registered nurse.

(e) Employee of the Department of Human Services, **Oregon Health Authority**, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health [and] **program, a community** developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.

(i) Licensed clinical social worker.

(j) Optometrist.

(k) Chiropractor.

(L) Certified provider of foster care, or an employee thereof.

(m) Attorney.

(n) Naturopathic physician.

(o) Licensed professional counselor.

(p) Licensed marriage and family therapist.

(q) Firefighter or emergency medical technician.

(r) A court appointed special advocate, as defined in ORS 419A.004.

(s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

(t) Member of the Legislative Assembly.

(4) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) A county juvenile department.

SECTION 365. ORS 419B.839 is amended to read:

419B.839. (1) Summons in proceedings to establish jurisdiction under ORS 419B.100 must be served on:

(a) The parents of the child without regard to who has legal or physical custody of the child;

(b) The legal guardian of the child;

(c) A putative father of the child who satisfies the criteria set out in ORS 419B.875 (1)(a)(C), except as provided in subsection (4) of this section;

(d) A putative father of the child if notice of the initiation of filiation or paternity proceedings was on file with the Center for Health Statistics of the [Department of Human Services] **Oregon Health Authority** prior to the initiation of the juvenile court proceedings, except as provided in subsection (4) of this section;

(e) The person who has physical custody of the child, if the child is not in the physical custody of a parent; and

(f) The child, if the child is 12 years of age or older.

(2) If it appears to the court that the welfare of the child or of the public requires that the child immediately be taken into custody, the court may indorse an order on the summons directing the officer serving it to take the child into custody.

(3) Summons may be issued requiring the appearance of any person whose presence the court deems necessary.

(4) Summons under subsection (1) of this section is not required to be given to a putative father whom a court of competent jurisdiction has found not to be the child's legal father or who has filed a petition for filiation that was dismissed if no appeal from the judgment or order is pending.

(5) If a guardian ad litem has been appointed for a parent under ORS 419B.231, a copy of a summons served on the parent under this section must be provided to the guardian ad litem.

SECTION 366. ORS 419C.239 is amended to read:

419C.239. (1) A formal accountability agreement shall:

(a) Be completed within a period of time not to exceed one year;

(b) Be voluntarily entered into by all parties;

(c) Be revocable by the youth at any time by a written revocation;

(d) Be revocable by the juvenile department in the event the department has reasonable cause to believe the youth has failed to carry out the terms of the formal accountability agreement or has committed a subsequent offense;

(e) Not be used as evidence against the youth at any adjudicatory hearing;

(f) Be executed in writing and expressed in language understandable to the persons involved;

(g) Be signed by the juvenile department, the youth, the youth's parent or parents or legal guardian, and the youth's counsel, if any;

(h) Become part of the youth's juvenile department record; and

(i) When the youth has been charged with having committed the youth's first violation of a provision under ORS 475.860 (3)(b) or 475.864 (3) and unless the juvenile department determines that it would be inappropriate in the particular case:

(A) Require the youth to participate in a diagnostic assessment and an information or treatment program as recommended by the assessment. The agencies or organizations providing assessment or programs of information or treatment must be the same as those designated by the court under ORS 419C.443 (1) and must meet the standards set by the Director of [*Human Services*] **the Oregon Health Authority**. The parent of the youth shall pay the cost of the youth's participation in the program based upon the ability of the parent to pay.

(B) Monitor the youth's progress in the program which shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the juvenile department stating the youth's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the juvenile department and the diagnostic assessment agency or organization. The juvenile department shall make the report a part of the record of the case.

(2) Notwithstanding any other provision of law, the following information contained in a formal accountability agreement under ORS 419C.230 is not confidential and is not exempt from disclosure:

(a) The name and date of birth of the youth;

(b) The act alleged; and

(c) The portion of the agreement providing for the disposition of the youth.

SECTION 367. ORS 419C.443 is amended to read:

419C.443. (1) Except when otherwise provided in subsection (3) of this section, when a youth offender has been found to be within the jurisdiction of the court under ORS 419C.005 for a first violation of the provisions under ORS 475.860 (3)(b) or 475.864 (3), the court shall order an evaluation and designate agencies or organizations to perform diagnostic assessment and provide programs of information and treatment. The designated agencies or organizations must meet the

standards set by the Director of [*Human Services*] **the Oregon Health Authority**. Whenever possible, the court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of information or treatment. The parent of the youth offender shall pay the cost of the youth offender's participation in the program based upon the ability of the parent to pay. The petition shall be dismissed by the court upon written certification of the youth offender's successful completion of the program from the designated agency or organization providing the information and treatment.

(2) Monitoring the youth offender's progress in the program shall be the responsibility of the diagnostic assessment agency or organization. The agency or organization shall make a report to the court stating the youth offender's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report a part of the record of the case.

(3) The court is not required to make the disposition required by subsection (1) of this section if the court determines that the disposition is inappropriate in the case or if the court finds that the youth offender has previously entered into a formal accountability agreement under ORS 419C.239 (1)(i).

SECTION 368. ORS 419C.507 is amended to read:

419C.507. The court may, in lieu of or in addition to any disposition under this chapter, direct that a youth offender be examined or treated by a physician, psychiatrist or psychologist, or receive other special care or treatment in a hospital or other suitable facility. If the court determines that mental health examination and treatment should be provided by services delivered through the [*Department of Human Services, the department*] **Oregon Health Authority, the Department of Human Services** shall determine the appropriate placement or services in consultation with the court, the Oregon Youth Authority and other affected agencies. If the youth authority or another affected agency objects to the type of placement or services, the court shall determine the appropriate type of placement or service. During the examination or treatment of the youth offender, the department may, if appropriate, be appointed guardian of the youth offender.

SECTION 369. ORS 419C.529 is amended to read:

419C.529. (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds by a preponderance of the evidence that the young person, at the time of disposition, has a serious mental condition or has a mental disease or defect other than a serious mental condition and presents a substantial danger to others, requiring conditional release or commitment to a hospital or facility designated on an individual case basis by the Department of Human Services **or the Oregon Health Authority** as provided in subsection (6) of this section, the court shall order the young person placed under the jurisdiction of the Psychiatric Security Review Board.

(2) The court shall determine whether the young person should be committed to a hospital or facility designated on an individual case basis by the department **or the authority**, as provided in subsection (6) of this section, or conditionally released pending a hearing before the juvenile panel of the Psychiatric Security Review Board as follows:

(a) If the court finds that the young person is not a proper subject for conditional release, the court shall order the young person committed to a secure hospital or a secure intensive community inpatient facility designated on an individual case basis by the department **or the authority**, as provided in subsection (6) of this section, for custody, supervision and treatment pending a hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542 and shall order the young person placed under the jurisdiction of the board.

(b) If the court finds that the young person can be adequately controlled with supervision and treatment services if conditionally released and that necessary supervision and treatment services are available, the court may order the young person conditionally released, subject to those supervisory orders of the court that are in the best interests of justice and the young person. The court shall designate a qualified mental health or developmental disabilities treatment provider or state, county or local agency to supervise the young person on release, subject to those conditions as the

court directs in the order for conditional release. Prior to the designation, the court shall notify the qualified mental health or developmental disabilities treatment provider or agency to whom conditional release is contemplated and provide the qualified mental health or developmental disabilities treatment provider or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person subject to the direction of the juvenile panel. The qualified mental health or developmental disabilities treatment provider or agency designated as supervisor shall report in writing no less than once per month to the juvenile panel concerning the supervised young person's compliance with the conditions of release.

(c) For purposes of determining whether to order commitment to a hospital or facility or conditional release, the primary concern of the court is the protection of society.

(3) In determining whether a young person should be conditionally released, the court may order examinations or evaluations deemed necessary.

(4) Upon placing a young person on conditional release and ordering the young person placed under the jurisdiction of the board, the court shall notify the juvenile panel in writing of the court's conditional release order, the supervisor designated and all other conditions of release pending a hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542.

(5) When making an order under this section, the court shall:

(a) Determine whether the parent or guardian of the young person is able and willing to assist the young person in obtaining necessary mental health or developmental disabilities services and is willing to acquiesce in the decisions of the juvenile panel. If the court finds that the parent or guardian:

(A) Is able and willing to do so, the court shall order the parent or guardian to sign an irrevocable consent form in which the parent agrees to any placement decision made by the juvenile panel.

(B) Is unable or unwilling to do so, the court shall order that the young person be placed in the legal custody of the Department of Human Services for the purpose of obtaining necessary *[mental health or]* developmental disabilities services **or the Oregon Health Authority for the purpose of obtaining necessary mental health services.**

(b) Make specific findings on whether there is a victim and, if so, whether the victim wishes to be notified of any board hearings concerning the young person and of any conditional release, discharge or escape of the young person.

(c) Include in the order a list of the persons who wish to be notified of any board hearing concerning the young person.

(d) Determine on the record the act committed by the young person for which the young person was found responsible except for insanity.

(e) State on the record the mental disease or defect on which the young person relied for the responsible except for insanity defense.

(6) When the department designates **a facility for the commitment of a developmentally disabled young person under this section, or the authority designates** a hospital or facility for commitment of a **mentally ill** young person under this section, the department **and the authority** shall take into account the care and treatment needs of the young person, the resources *[of the department]* **available to the department or the authority** and the safety of the public.

SECTION 370. ORS 419C.530 is amended to read:

419C.530. The juvenile panel of the Psychiatric Security Review Board exercises continuing jurisdiction over a young person committed to, or retained in, a hospital or facility designated by the Department of Human Services **or the Oregon Health Authority** under ORS 419C.529. If the board determines after review that the placement of a young person in the particular hospital or facility is so inappropriate as to create a substantial danger to others, the board may direct the department **or the authority** to place the young person in a specific type of facility or direct specific care or

supervision, but the actual placement of the young person is the responsibility of the department **or the authority.**

SECTION 371. ORS 419C.532 is amended to read:

419C.532. (1) The juvenile panel of the Psychiatric Security Review Board shall conduct hearings on an application for discharge, conditional release, commitment or modification filed under or required by ORS 419C.538, 419C.540 and 419C.542, and shall make findings on the issues before the juvenile panel.

(2) In every hearing before the juvenile panel, the juvenile panel shall determine whether the young person:

(a) Has a serious mental condition; or

(b) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others.

(3) The juvenile panel shall order a young person discharged from commitment or conditional release if the juvenile panel finds that the young person:

(a) No longer has a mental disease or defect; or

(b) Has a mental disease or defect other than a serious mental condition but no longer presents a substantial danger to others.

(4) The juvenile panel shall order a young person conditionally released subject to ORS 419C.538 if the juvenile panel finds that:

(a) The young person:

(A) Has a serious mental condition; or

(B) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others;

(b) The young person can be adequately controlled with treatment services as a condition of release; and

(c) Necessary supervision and treatment services are available.

(5) The juvenile panel shall order a young person committed to, or retained in, a hospital or facility designated by the Department of Human Services **or the Oregon Health Authority** for custody, supervision and treatment subject to ORS 419C.540 if the juvenile panel finds that the young person:

(a)(A) Has a serious mental condition; or

(B) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others; and

(b) Cannot be adequately controlled if conditionally released.

(6) In determining whether a young person should be committed to or retained in a hospital or facility, conditionally released or discharged, the primary concern of the juvenile panel is the protection of society.

(7) In a hearing before the juvenile panel, a young person who has a mental disease or defect in a state of remission is considered to have a mental disease or defect if the mental disease or defect may, with reasonable medical probability, occasionally become active.

(8) At any time, the juvenile panel may appoint a psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry or a licensed psychologist with expertise in child psychology to examine the young person and submit a written report to the juvenile panel. Reports filed with the juvenile panel pursuant to the examination must include, but need not be limited to, an opinion as to whether the young person:

(a)(A) Has a serious mental condition; or

(B) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others; and

(b) Could be adequately controlled with treatment services as a condition of release.

(9) The juvenile panel may make a determination regarding discharge or conditional release based upon the written report submitted under subsection (8) of this section or ORS 419C.540 (3). If a member of the juvenile panel desires further information from the examining psychiatrist or li-

censed psychologist who submitted the report, the juvenile panel shall summon the psychiatrist or psychologist to give testimony.

(10) The juvenile panel shall consider all available evidence that is material, relevant and reliable regarding the issues before the juvenile panel. Evidence may include, but is not limited to, the record of the juvenile court adjudication, information supplied by the attorney representing the state or by any other interested person, including the young person, information concerning the young person's mental condition and the entire psychiatric and juvenile court history of the young person. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible at the hearings. Testimony must be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths and affirmations to witnesses.

(11) The standard of proof on all issues at a hearing of the juvenile panel is by a preponderance of the evidence.

(12)(a) The juvenile panel shall furnish written notice of any hearing pending under this section within a reasonable time prior to the hearing to:

- (A) The young person about whom the hearing is being conducted;
- (B) The attorney representing the young person;
- (C) The young person's parents or guardians, if known;
- (D) The person having legal custody of the young person;
- (E) The Attorney General or other attorney representing the state, if any; and
- (F) The district attorney and the court or juvenile department of the county in which the young person was adjudicated.

(b) The juvenile panel shall include in the notice required by paragraph (a) of this subsection:

- (A) The time, place and location of the hearing;
- (B) The nature of the hearing, the specific action for which the hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved;

(C) A statement of the authority and jurisdiction under which the hearing is to be held; and

(D) A statement of all rights under subsection (13) of this section.

(13) A young person about whom a hearing is being held has the right:

- (a) To appear at all proceedings held under this section, except juvenile panel deliberations.
- (b) To cross-examine all witnesses appearing to testify at the hearing.
- (c) To subpoena witnesses and documents as provided in ORS 161.395.
- (d) To be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if financially eligible, to have suitable counsel appointed at state expense.
- (e) To examine all information, documents and reports that the juvenile panel considers and, if the information, documents and reports are available to the juvenile panel before the hearing, to examine them prior to the hearing.

(14) Except for deliberations of the juvenile panel, the juvenile panel shall keep a record of all hearings before the juvenile panel.

(15) Upon request of a person listed in subsection (12)(a) of this section or on its own motion, the juvenile panel may continue a hearing for a reasonable period not to exceed 60 days to obtain additional information or testimony or for other good cause shown.

(16) Within 15 days after the conclusion of the hearing, the juvenile panel shall provide written notice of the juvenile panel's decision to the young person, the attorney representing the young person, the young person's parents or guardians, if known, the person having legal custody of the young person, the district attorney of the county in which the young person was adjudicated and the Attorney General or other attorney representing the state, if any.

(17) The juvenile panel shall maintain and keep current the medical, social and delinquency history of all young persons. The juvenile panel shall determine the confidentiality of records maintained by the juvenile panel pursuant to ORS 192.501 to 192.505.

SECTION 372. ORS 419C.533 is amended to read:

419C.533. (1) The juvenile panel of the Psychiatric Security Review Board, by rule pursuant to ORS 183.325 to 183.410 and not inconsistent with law, may implement its policies and set out its procedure and practice requirements and may promulgate such interpretive rules as the panel deems necessary or appropriate to carry out its statutory responsibilities.

(2) The juvenile panel of the Psychiatric Security Review Board shall adopt rules defining the type of dangerous behavior that requires the temporary placement of a young person with mental retardation in a secure hospital or facility.

(3) The juvenile panel of the Psychiatric Security Review Board shall consult with the Department of Human Services **about proposed rules relating to developmental disabilities and the Oregon Health Authority about proposed rules relating to mental illness** before issuing proposed rules for public comment and before adopting rules under this section.

SECTION 373. ORS 419C.538 is amended to read:

419C.538. (1) When the juvenile panel of the Psychiatric Security Review Board orders a young person conditionally released under ORS 419C.532 (4), the juvenile panel may designate a qualified mental health or developmental disabilities treatment provider or state, county or local agency to supervise the young person on release subject to those conditions as the juvenile panel directs in the order for conditional release. Prior to the designation, the juvenile panel shall notify the qualified mental health or developmental disabilities treatment provider or agency to whom conditional release is contemplated and provide the qualified mental health or developmental disabilities treatment provider or agency an opportunity to be heard before the juvenile panel. After receiving an order entered under ORS 419C.532 (4), the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person pursuant to the direction of the juvenile panel.

(2) Conditions of release contained in orders entered under ORS 419C.532 (4) may be modified from time to time and conditional release may be terminated by order of the juvenile panel as provided in ORS 419C.532 and 419C.542.

(3)(a) As a condition of release, the juvenile panel may require the young person to report to any state, county or local mental health or developmental disabilities facility for evaluation. Whenever medical, psychiatric or psychological treatment is recommended, the juvenile panel may order the young person, as a condition of release, to cooperate with and accept the treatment of the facility.

(b) The facility to which the young person has been referred for evaluation shall perform the evaluation and submit a written report of its findings to the juvenile panel. If the facility finds that treatment of the young person is appropriate, the facility shall include its recommendations for treatment in the report to the juvenile panel.

(c) Whenever treatment is provided by the facility, the facility shall furnish reports to the juvenile panel on a regular basis concerning the progress of the young person.

(d) The facility shall comply with any other conditions of release prescribed by order of the juvenile panel.

(4) If at any time it appears to the juvenile panel or the chairperson of the juvenile panel that a young person has violated the terms of conditional release or that the mental health of the young person has changed, the juvenile panel or the chairperson of the juvenile panel may order the young person returned to a hospital or facility designated by the Department of Human Services **or the Oregon Health Authority** for evaluation and treatment. A written order of the juvenile panel, or the chairperson of the juvenile panel on behalf of the juvenile panel, is sufficient warrant for any peace officer to take the young person into custody and transport the young person accordingly. A peace officer shall execute the order, and the young person shall be returned as soon as practicable to a facility designated by the department **or the authority**. Within 20 days following the return of the young person to the facility designated by the department **or the authority**, the juvenile panel shall conduct a hearing. At a hearing required by this subsection, the state has the burden of proving the young person's lack of fitness for conditional release.

(5) The community mental health [and] **program director, the community** developmental disabilities program director, the director of the facility providing treatment for the young person on conditional release, a peace officer or a person responsible for the supervision of a young person on conditional release may take a young person into custody or request that the young person be taken into custody if there is reasonable cause to believe the young person presents a substantial danger to others and that the young person is in need of immediate custody, supervision and treatment. A young person taken into custody under this subsection must immediately be transported to a hospital or facility designated by the department **or the authority**. Within 20 days following the return of the young person to the facility designated by the department **or the authority**, the juvenile panel shall conduct a hearing. At a hearing required by this subsection, the state has the burden of proving the young person's lack of fitness for conditional release.

(6)(a) A young person conditionally released under ORS 419C.532 (4) may apply to the juvenile panel for discharge from or modification of an order of conditional release on the ground that the young person no longer has a mental disease or defect or, if affected by a mental disease or defect other than a serious mental condition, no longer presents a substantial danger to others and no longer requires supervision or treatment services. Within 60 days after receiving an application under this paragraph, the juvenile panel shall conduct a hearing. At a hearing required by this paragraph, the young person has the burden of proving the young person's fitness for discharge or modification of the order of conditional release. A young person may not apply for discharge or modification of conditional release more often than once every six months.

(b) Upon application by any qualified mental health or developmental disabilities treatment provider or state, county or local agency responsible for supervision or treatment services pursuant to an order of conditional release, the juvenile panel shall conduct a hearing to determine if the conditions of release should be continued, modified or terminated. The application must be accompanied by a report setting forth the facts supporting the application. At a hearing required by this paragraph, the state has the burden of proving the young person's lack of fitness for discharge or modification of the order of conditional release.

SECTION 374. ORS 419C.542 is amended to read:

419C.542. (1) A young person committed by the court under ORS 419C.529 to a hospital or facility designated by the Department of Human Services **or the Oregon Health Authority** may not be held in the hospital or facility for more than 90 days from the date of the court's commitment order without an initial hearing before the juvenile panel of the Psychiatric Security Review Board to determine whether the young person should be discharged or conditionally released.

(2) A young person may not be held pursuant to an order under ORS 419C.532 (5) for a period of time exceeding one year without a hearing before the juvenile panel to determine whether the young person should be discharged or conditionally released.

(3) When a young person has spent three years on conditional release, the juvenile panel shall bring the young person before the juvenile panel no later than 30 days after the expiration of the three-year period. The juvenile panel shall review the young person's status and determine whether the young person should be discharged from the jurisdiction of the board.

(4) Notwithstanding the fact that a young person who is brought before the juvenile panel under subsection (3) of this section continues to have a serious mental condition, the juvenile panel may discharge the young person if the young person did not exhibit behaviors that presented a substantial danger to others during the period of conditional release and no longer requires supervision by the juvenile panel.

SECTION 375. ORS 420.505 is amended to read:

420.505. (1) A youth offender at a youth correction facility may apply for admission to a hospital or facility designated by the Department of Human Services **or the Oregon Health Authority**. The application may be made on behalf of the youth offender by the parents or legal guardian of the youth offender. However, the superintendent shall not be required to cause the examination of a youth offender who applies under this section more often than once in six months.

(2) Within five working days after receipt of the application, the superintendent of the youth correction facility shall cause the youth offender to be examined by one or more qualified persons at the facility and shall request the examination of the youth offender by one or more qualified persons employed or designated by the department **or the Oregon Health Authority**. The examination conducted or authorized by the department **or the Oregon Health Authority** shall take place within five working days after receipt of the request from the superintendent. The examiners shall prepare separate reports and shall submit such reports to the superintendent. A copy of the reports shall be given to the applicant.

(3) If the superintendent finds that there is a probable cause to believe that the youth offender has a mental illness and that it would be in the best interests of the youth offender to be admitted to a hospital or facility designated by the department **or the Oregon Health Authority**, the superintendent shall notify the department **or the Oregon Health Authority** and shall order the youth offender transferred pursuant to ORS 179.473.

(4) No youth offender at a youth correction facility voluntarily admitted to a hospital or facility designated by the department **or the Oregon Health Authority** shall be detained therein more than 72 hours after the youth offender is of the age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and physical custody of the youth offender and has given notice in writing of the desire of the youth offender to be released. If the youth offender is under the age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and physical custody of the youth offender, the youth offender may be returned to the youth correction facility after notice in writing has been given by the parent or legal guardian of the youth offender, that such parent or guardian desires that the youth offender be discharged from the hospital or facility designated by the department **or the Oregon Health Authority**.

SECTION 376. ORS 420.870 is amended to read:

420.870. Approval of the youth care center by the Oregon Youth Authority, required by ORS 420.865, shall be based on reasonable and satisfactory assurance that:

(1) Adequate physical facilities exist which comply with applicable rules of the Department of Human Services, **the Oregon Health Authority** and the State Fire Marshal.

(2) There is employment of capable and trained or experienced personnel.

(3) The youth care programs include educational, vocational, recreational and counseling opportunities that will be in the best interests of the youth.

(4) A county must demonstrate that an adequate probation system for youths exists in the county in order to be eligible for state support for a youth care center.

SECTION 377. ORS 420A.135 is amended to read:

420A.135. (1) The Oregon Youth Authority may establish up to five secure regional youth facilities.

(2) A secure regional youth facility shall:

(a) Provide secure incarceration;

(b) Provide education and job and life skills training including, but not limited to, anger management and self-control; and

(c) Include a drug and alcohol treatment component that meets the standards promulgated by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 430.357.

(3) The Director of the Oregon Youth Authority is solely responsible for determining which persons committed to, or placed in the custody of, the youth authority are eligible to participate in, and are accepted for placement in, a secure regional youth facility. The juvenile court may recommend to the Oregon Youth Authority that a youth offender be placed in a secure regional youth facility, but the recommendation is not binding on the youth authority.

SECTION 378. ORS 420A.145 is amended to read:

420A.145. (1) The Oregon Youth Authority may establish up to eight regional youth accountability camps.

(2) A regional youth accountability camp shall:

(a) Be based on a military basic training model that includes discipline, physical work, physical exercise and military drill;

(b) Provide for cognitive restructuring in conformance with generally accepted rehabilitative standards; and

(c) Include a drug and alcohol treatment component that meets the standards promulgated by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 430.357.

(3) The youth authority may contract with all of the governing bodies of the counties in a region to administer cooperatively a regional youth accountability camp subject to the provisions of ORS 420.011, 420.014, 420A.108 and 420A.111 (5).

(4) The youth authority may contract with any private agency to administer a regional youth accountability camp subject to the provisions of ORS 420A.108 and 420A.111 (5).

SECTION 379. ORS 420A.155 is amended to read:

420A.155. (1) The Oregon Youth Authority may establish up to four regional residential academies.

(2) A regional residential academy shall:

(a) Provide a secure, closed residential campus;

(b) Provide year-round education, job and life skills training, vocational training and apprenticeship programs; and

(c) Include a drug and alcohol treatment component that meets the standards promulgated by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 430.357.

(3) The youth authority may contract with all of the governing bodies of the counties in a region to administer cooperatively a regional residential academy subject to the provisions of ORS 420.011, 420.014, 420A.108 and 420A.111 (5).

(4) The youth authority may contract with any private agency to administer a regional residential academy subject to the provisions of ORS 420A.108 and 420A.111 (5).

(5) The Director of the Oregon Youth Authority is solely responsible for determining which persons committed to, or placed in the physical custody of, the youth authority are eligible to participate in, and are accepted for, a regional residential academy. The juvenile court may recommend to the Oregon Youth Authority that a youth offender be placed in a regional residential academy, but the recommendation is not binding on the youth authority.

SECTION 380. ORS 421.504 is amended to read:

421.504. (1) The Department of Corrections, in consultation with the Oregon Criminal Justice Commission, shall establish a special alternative incarceration program stressing a highly structured and regimented routine. The program:

(a) Shall reflect evidence-based practices;

(b) Shall include a component of intensive self-discipline, physical work and physical exercise;

(c) Shall provide for cognitive restructuring in conformance with generally accepted rehabilitative standards;

(d) May include a drug and alcohol treatment component that meets the standards promulgated by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 430.357; and

(e) Shall be at least 270 days' duration.

(2) The department shall provide capital improvements and capital construction necessary for the implementation of the program.

(3) Notwithstanding subsection (1) of this section, the department may convert the special alternative incarceration program required by this section into an intensive alternative incarceration addiction program as described in ORS 421.506 if the department determines that the needs of offenders in the department's custody would be better served by an intensive alternative incarceration addiction program than by the special alternative incarceration program.

SECTION 381. ORS 426.005 is amended to read:

426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) ["Department" means the Department of Human Services] "**Authority**" means the **Oregon Health Authority**.

(b) "Director of the facility" means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

(c) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the [department] **authority** determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for committed mentally ill persons.

(d) "Mentally ill person" means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

(B) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(C) A person:

(i) With a chronic mental illness, as defined in ORS 426.495;

(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the [department] **authority** under ORS 426.060;

(iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of this subparagraph; and

(iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either subparagraph (A) or (B) of this paragraph or both.

(e) "Nonhospital facility" means any facility, other than a hospital, that is approved by the [department] **authority** to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

(f) "Prehearing period of detention" means a period of time calculated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

(2) Whenever a community mental health [and developmental disabilities program] director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person's behalf in the exercise of duties.

SECTION 382. ORS 426.010 is amended to read:

426.010. Except as otherwise ordered by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 179.325, the Oregon State Hospital in Salem, Marion County, and the Blue Mountain Recovery Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are assigned to the care of such institutions by the [department] **authority** or who have previously been committed to such institutions.

SECTION 383. ORS 426.020 is amended to read:

426.020. The superintendent of a hospital referred to in ORS 426.010 shall be a person the [Department of Human Services] **Oregon Health Authority** considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the Oregon Medical Board, the superintendent shall serve as chief medical officer. If the superintendent is not a physician, the Director of [Human Services] **the Oregon Health Authority** or the designee of the director shall appoint a physician to serve as chief medical officer who shall be in the unclassified service.

SECTION 384. ORS 426.060 is amended to read:

426.060. (1) Commitments to the [Department of Human Services] **Oregon Health Authority** shall be made only by the judge of a circuit court in a county of this state.

(2) The following is a nonexclusive list of powers the [department] **authority** may exercise concerning the placement of persons committed or persons receiving emergency care and treatment under ORS 426.070, 426.228 to 426.235 or 426.237:

(a) In its discretion and for reasons which are satisfactory to the [department] **authority**, the [department] **authority** may direct any court-committed person to the facility best able to treat the person. The [authority of the department] **decision of the authority** on such matters shall be final.

(b) At any time, for good cause and in the best interest of the mentally ill person, the [department] **authority** may transfer a committed person from one facility to another. When transferring a person under this paragraph, the [department] **authority** shall make the transfer:

(A) If the transfer is from a facility in one class to a facility of the same class, as provided by rule of the [department] **authority**;

(B) If the transfer is from a facility in one class to a facility in a less restrictive class, by following the procedures for trial visits under ORS 426.273; and

(C) If the transfer is from a facility in one class to a facility in a more restrictive class, by following the procedures under ORS 426.275.

(c) At any time, for good cause and in the best interest of the mentally ill person, the [department] **authority** may transfer a person receiving emergency care and treatment under ORS 426.070 or 426.228 to 426.235, or intensive treatment under ORS 426.237, between hospitals and nonhospital facilities approved by the [department] **authority** to provide emergency care or treatment as defined by rule of the [department] **authority**.

(d) Pursuant to its rules, the [department] **authority** may delegate to a community mental health [and developmental disabilities] program director the responsibility for assignment of mentally ill persons to suitable facilities or transfer between such facilities under conditions which the [department] **authority** may define.

SECTION 385. ORS 426.070 is amended to read:

426.070. (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

(a) Two persons;

(b) The county health officer; or

(c) Any magistrate.

(2) For purposes of subsection (1) of this section, the notice must comply with the following:

(a) It must be in writing under oath;

(b) It must be given to the community mental health [and developmental disabilities] program director or a designee of the director in the county where the allegedly mentally ill person resides;

(c) It must state that a person within the county other than the person giving the notice is a mentally ill person and is in need of treatment, care or custody;

(d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this section, it may include a request that the court notify the two persons:

(A) Of the issuance or nonissuance of a warrant under this section; or

(B) Of the court's determination under ORS 426.130 (1); and

(e) If the notice contains a request under paragraph (d) of this subsection, it must also include the addresses of the two persons making the request.

(3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a circuit court that the court received notice under ORS 426.234, the community mental health [and developmental disabilities] program director, or designee of the director, shall:

(a) Immediately notify the judge of the court having jurisdiction for that county under ORS 426.060 of the notification described in subsections (1) and (2) of this section.

(b) Immediately notify the [Department of Human Services] **Oregon Health Authority** if commitment is proposed because the person appears to be a mentally ill person, as defined in ORS 426.005 (1)(d)(C). When such notice is received, the [department] **authority** may verify, to the extent known by the [department] **authority**, whether or not the person meets the criteria described in ORS 426.005 (1)(d)(C)(i) and (ii) and so inform the community mental health [and developmental disabilities] program director or designee of the director.

(c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to believe that the person is in fact a mentally ill person.

(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074 shall be promptly submitted to the court. If the community mental health [*and developmental disabilities*] program director determines that probable cause does not exist to believe that a person released from detention under ORS 426.234 (2)(c) or (3)(b) is a mentally ill person, the community mental health [*and developmental disabilities*] program director shall not submit a recommendation to the court.

(5) When the court receives notice under subsection (3) of this section:

(a) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a mentally ill person, it shall, through the issuance of a citation as provided in ORS 426.090, cause the person to be brought before it at a time and place as it may direct, for a hearing under ORS 426.095 to determine whether the person is mentally ill. The person shall be given the opportunity to appear voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant to paragraph (b) of this subsection.

(b)(A) The judge may cause the allegedly mentally ill person to be taken into custody pending the investigation or hearing by issuing a warrant of detention under this subsection. A judge may only issue a warrant under this subsection if the court finds that there is probable cause to believe that failure to take the person into custody would pose serious harm or danger to the person or to others.

(B) To cause the custody of a person under this paragraph, the judge must issue a warrant of detention to the community mental health [*and developmental disabilities*] program director or designee, the sheriff of the county or designee, directing that person to take the allegedly mentally ill person into custody and produce the person at the time and place stated in the warrant.

(C) At the time the person is taken into custody, the person shall be informed by the community mental health [*and developmental disabilities*] program director, the sheriff or a designee of the following:

(i) The person's rights with regard to representation by or appointment of counsel as described in ORS 426.100;

(ii) The warning under ORS 426.123; and

(iii) The person's right, if the community mental health [*and developmental disabilities*] program director, sheriff or designee reasonably suspects that the person is a foreign national, to communicate with an official from the consulate of the person's country. A community mental health [*and developmental disabilities*] program director, sheriff or designee is not civilly or criminally liable for failure to provide the information required by this sub-subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(D) The court may make any orders for the care and custody of the person prior to the hearing as it considers necessary.

(c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall notify the two persons of the issuance or nonissuance of a warrant under this subsection.

SECTION 386. ORS 426.072 is amended to read:

426.072. (1) A hospital or nonhospital facility and a treating physician must comply with the following when an allegedly mentally ill person is placed in custody at the hospital or nonhospital facility:

(a) By a warrant of detention under ORS 426.070;

(b) By a peace officer under ORS 426.228 or other person authorized under ORS 426.233; or

(c) By a physician under ORS 426.232.

(2) In circumstances described under subsection (1) of this section, the hospital or nonhospital facility and treating physician must comply with the following:

(a) The person shall receive the care, custody and treatment required for mental and physical health and safety;

(b) The treating physician shall report any care, custody and treatment to the court as required in ORS 426.075;

(c) All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, the person shall not be subject to electroshock therapy or unduly hazardous treatment and shall receive usual and customary treatment in accordance with medical standards in the community;

(d) The treating physician shall be notified immediately of any use of mechanical restraints on the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the treating physician; and

(e) The treating physician shall give the person the warning under ORS 426.123 at times the treating physician determines the person will reasonably understand the notice. This paragraph only requires the notice to be given as often as the physician determines is necessary to assure that the person is given an opportunity to be aware of the notice.

(3) The [Department of Human Services] **Oregon Health Authority** shall adopt rules necessary to carry out this section, including rules regarding the content of the medical record compiled during the current period of custody.

SECTION 387. ORS 426.074 is amended to read:

426.074. The following is applicable to an investigation initiated by a community mental health [and developmental disabilities] program director, or a designee of the director, as part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

(1) If the allegedly mentally ill person is held in custody before the hearing the investigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the investigation shall comply with the following time schedule:

(a) If the allegedly mentally ill person can be located, the investigator shall contact the person within three judicial days from the date the community mental health [and developmental disabilities] program director or a designee receives a notice under ORS 426.070 alleging that the person is mentally ill.

(b) Within 15 days from the date the community mental health [and developmental disabilities] program director or a designee receives a notice under ORS 426.070 alleging that a person is mentally ill, one of the following shall occur:

(A) The investigation shall be completed and submitted to the court.

(B) An application for extension shall be made to the court under paragraph (c) of this subsection.

(c) The community mental health [and developmental disabilities] program director, a designee or the investigator may file for an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

(A) A treatment option less restrictive than involuntary in-patient commitment is actively being pursued.

(B) The allegedly mentally ill person cannot be located.

(d) A court may grant an extension under paragraph (c) of this subsection for a time and upon the terms and conditions the court considers appropriate.

(2) This subsection establishes a nonexclusive list of provisions applicable to the content of the investigation, as follows:

(a) The investigation conducted should, where appropriate, include an interview or examination of the allegedly mentally ill person in the home of the person or other place familiar to the person.

(b) Whether or not the allegedly mentally ill person consents, the investigation should include interviews with any persons that the investigator has probable cause to believe have pertinent information regarding the investigation. If the allegedly mentally ill person objects to the contact with any person, the objection shall be noted in the investigator's report.

(c) The investigator shall be allowed access to physicians, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention to determine probable cause and to develop alternatives to commitment. If commitment is proposed because the person appears to be a mentally ill person as defined in ORS 426.005 (1)(d)(C), the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in ORS

426.005 (1)(d)(C). The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and communications related thereto are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

(3) A copy of the investigation report shall be provided as soon as possible, but in no event later than 24 hours prior to the hearing, to the allegedly mentally ill person and to that person's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court for use in questioning witnesses.

SECTION 388. ORS 426.075 is amended to read:

426.075. This section establishes procedures that are required to be followed before the hearing if a court, under ORS 426.070, orders a hearing under ORS 426.095. The following apply as described:

(1) The court shall be fully advised of all drugs and other treatment known to have been administered to the allegedly mentally ill person that may substantially affect the ability of the person to prepare for or function effectively at the hearing. The following shall advise the court as required by this subsection:

(a) When not otherwise provided by paragraph (b) of this subsection, the community mental health [*and developmental disabilities*] program director or designee.

(b) When the person has been detained by a warrant of detention under ORS 426.070, 426.180, 426.228, 426.232 or 426.233, the treating physician.

(2) The court shall appoint examiners under ORS 426.110 sufficiently long before the hearing so that they may begin their preparation for the hearing. The records established by the [*Department of Human Services*] **Oregon Health Authority** by rule and the investigation report shall be made available to the examiners at least 24 hours before the hearing in order that the examiners may review the medical record and have an opportunity to inquire of the medical personnel concerning the treatment of the allegedly mentally ill person relating to the detention period prior to the hearing.

(3) The medical record described in subsection (2) of this section shall be made available to counsel for the allegedly mentally ill person at least 24 hours prior to the hearing.

(4) When requested by a party to the action, the party's attorney shall subpoena physicians who are or have been treating the allegedly mentally ill person. Any treating physician subpoenaed under this subsection shall be subpoenaed as an expert witness.

SECTION 389. ORS 426.095 is amended to read:

426.095. The following is applicable to a commitment hearing held by a court under ORS 426.070:

(1) The hearing may be held in a hospital, the person's home or in some other place convenient to the court and the allegedly mentally ill person.

(2) The court shall hold the hearing at the time established according to the following:

(a) Except as provided by paragraph (b) or (c) of this subsection, a hearing shall be held five judicial days from the day a court under ORS 426.070 issues a citation provided under ORS 426.090.

(b) Except as provided by paragraph (c) of this subsection, if a person is detained by a warrant of detention under ORS 426.070, a hearing shall be held within five judicial days of the commencement of detention.

(c) If requested under this paragraph, the court, for good cause, may postpone the hearing for not more than five judicial days in order to allow preparation for the hearing. The court may make orders for the care and custody of the person during a postponement as it deems necessary. If a person is detained before a hearing under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and the hearing is postponed under this paragraph, the court, for good cause, may allow the person to be detained during the postponement if the postponement is requested by the person or the legal counsel of the person. Any of the following may request a postponement under this paragraph:

(A) The allegedly mentally ill person.

(B) The legal counsel or guardian of the allegedly mentally ill person.

(C) The person representing the state's interest.

(3) The allegedly mentally ill person and the person representing the state's interest shall have the right to cross-examine all the following:

- (a) Witnesses.
- (b) The person conducting the investigation.
- (c) The examining physicians or other qualified persons recommended by the [*Department of Human Services*] **Oregon Health Authority** who have examined the person.

(4) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 shall not apply to and the court may consider as evidence any of the following:

- (a) Medical records for the current involuntary prehearing period of detention.
- (b) Statements attributed by the maker of the medical records or the investigation report to witnesses concerning their own observations in the absence of objection or if such persons are produced as witnesses at the hearing available for cross-examination.

(c) The testimony of any treating physicians, nurses or social workers for the prehearing period of detention. Any treating physician, nurse or social worker who is subpoenaed as a witness for the proceeding shall testify as an expert witness under the provisions of ORS 40.410, 40.415, 40.420 and 40.425 and is subject to treatment as an expert witness in the payment of witness fees and costs.

(d) The investigation report prepared under ORS 426.074. Subject to the following, the investigation report shall be introduced in evidence:

(A) Introduction of the report under this paragraph does not require the consent of the allegedly mentally ill person.

(B) Upon objection by any party to the action, the court shall exclude any part of the investigation report that may be excluded under the Oregon Evidence Code on grounds other than those set forth in ORS 40.230, 40.235, 40.240 or 40.250.

(C) Neither the investigation report nor any part thereof shall be introduced into evidence under this paragraph unless the investigator is present during the proceeding to be cross-examined or unless the presence of the investigator is waived by the allegedly mentally ill person or counsel for the allegedly mentally ill person.

SECTION 390. ORS 426.110 is amended to read:

426.110. The following requirements relating to the appointment of examiners for purposes of a hearing under ORS 426.095 apply as described:

(1) The judge shall appoint one qualified examiner. If requested, the judge shall appoint one additional qualified examiner. A request for an additional examiner under this subsection must be made in writing and must be made by the allegedly mentally ill person or the attorney for the allegedly mentally ill person.

(2) To be qualified for purposes of this section, an examiner must meet all of the following qualifications:

- (a) The person must agree to be an examiner.
- (b) The person must be one of the following:

(A) A physician licensed by the Oregon Medical Board who is competent to practice psychiatry as provided by the [*Department of Human Services*] **Oregon Health Authority** by rule.

(B) Certified as a mental health examiner qualified to make examinations for involuntary commitment proceedings by the [*department*] **authority**. The [*department has authority to*] **authority may** establish, by rule, requirements for certification as a mental health examiner for purposes of this subparagraph.

(3) The cost of examiners under this section shall be paid as provided under ORS 426.250.

SECTION 391. ORS 426.120 is amended to read:

426.120. (1) Persons appointed under ORS 426.110 to conduct the examination shall do the following:

- (a) Examine the person as to mental condition;
- (b) Initiate the examination process prior to the hearing. Any failure to comply with this paragraph shall not, in itself, constitute sufficient grounds to challenge the examination conducted by an examiner;
- (c) Make their separate reports in writing, under oath, to the court; and
- (d) Upon completion of the hearing, file the reports with the clerk of the court.

(2) The following is a nonexclusive list of requirements relating to the content of examination reports prepared under subsection (1) of this section:

(a) If the examining persons find, and show by their reports, that the person examined is a mentally ill person, the reports shall include a recommendation as to the type of treatment facility best calculated to help the person recover from mental illness.

(b) Each report shall also advise the court whether in the opinion of the examiner the mentally ill person would cooperate with and benefit from a program of voluntary treatment.

(c) Reports shall contain the information required by the [Department of Human Services] **Oregon Health Authority** by rule. The [department] **authority** shall adopt rules necessary to carry out this paragraph.

(3) The examiner shall be allowed access to physicians, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention and the investigation report. Records and communications described in this subsection and communications related thereto are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

SECTION 392. ORS 426.127 is amended to read:

426.127. The following provisions are applicable to outpatient commitment under ORS 426.130 as described:

(1) The [Department of Human Services] **Oregon Health Authority** may only place a person in an outpatient commitment if an adequate treatment facility is available.

(2) Conditions for the outpatient commitment shall be set at the time of the hearing under ORS 426.095 by the community mental health [and developmental disabilities] program director, or a designee for the director, for the county in which the hearing takes place. The conditions shall include, but not be limited to, the following:

(a) Provision for outpatient care.

(b) A designation of a facility, service or other provider to provide care or treatment.

(3) A copy of the conditions shall be given to all of the persons described in ORS 426.278.

(4) Any outpatient commitment ordered under this section is subject to the provisions under ORS 426.275.

(5) The community mental health [and developmental disabilities] program director or designee, for the county where a person is on outpatient commitment, may modify the conditions for outpatient commitment when a modification is in the best interest of the person. The community mental health [and developmental disabilities] program director or designee shall send notification of such changes and the reasons for the changes to all those who received a copy of the original conditions under ORS 426.278.

SECTION 393. ORS 426.130 is amended to read:

426.130. (1) After hearing all of the evidence, and reviewing the findings of the examining persons, the court shall determine whether the person is mentally ill. If, in the opinion of the court, the person is:

(a) Not mentally ill, the person shall be discharged forthwith.

(b) Mentally ill based upon clear and convincing evidence, the court:

(A) Shall order the release of the individual and dismiss the case if:

(i) The mentally ill person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.

(C) May order commitment of the individual to the [Department of Human Services] **Oregon Health Authority** for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the mentally ill person. If the court orders commitment under this subparagraph:

(i) The court shall establish a period of commitment.

(ii) The [department] **authority** may place the committed person in outpatient commitment under ORS 426.127.

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

(2) A court that orders a conditional release or a commitment under this section shall establish a period of commitment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days.

(3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice included a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's determination under subsection (1) of this section.

SECTION 394. ORS 426.140 is amended to read:

426.140. (1) No person, not incarcerated upon a criminal charge, who has been adjudged a mentally ill person or one against whom commitment proceedings have been instituted shall be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated, unless the person represents an immediate and serious danger to staff or physical facilities of a hospital or other facility approved by the [Department of Human Services] **Oregon Health Authority** for the care, custody and treatment of the person.

(2) No allegedly mentally ill person who has been taken into custody shall be confined, either before or after the commitment hearing, without an attendant in direct charge of the person; and, if not confined in a community hospital, the sheriff or community mental health [and developmental disabilities] program director having the person in custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person and approved by the [department] **authority**.

SECTION 395. ORS 426.150 is amended to read:

426.150. (1) Upon receipt of the order of commitment, the [Department of Human Services] **Oregon Health Authority** or its designee shall take the mentally ill person into its custody, and insure the safekeeping and proper care of the person until delivery is made to an assigned treatment facility or its representative. The representative of the treating facility to which the person has been assigned, accompanied by any assistants the [department] **authority** or its designee may deem necessary, shall proceed to the place where the person is to be delivered into custody, and upon demand shall be given custody of the mentally ill person, together with the certified record required by ORS 426.170. The representative shall issue appropriate receipts therefor and immediately proceed to transport the committed mentally ill person safely to the facility to which the person has been assigned by the [department] **authority** and there make delivery of the person and the record to the director or a designated employee of the facility. In taking custody of the person, the [department] **authority**, its designee, or the representative of the facility has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person.

(2) The committing judge, upon approval of the examining physicians or other qualified persons as recommended by the [department] **authority** and upon request of a guardian, friend or relative of the mentally ill person, may authorize the guardian, friend or relative to transport the person to the designated facility when the committing judge determines that means of transportation would not be detrimental to the welfare of the mentally ill person or to the public.

SECTION 396. ORS 426.170 is amended to read:

426.170. If any person is adjudged mentally ill and ordered committed to the [Department of Human Services] **Oregon Health Authority**, a copy of the complete record in the case, certified to

by the court clerk or court administrator, shall be given to the health officer of the county, or to the sheriff, for delivery to the director of the facility to which such mentally ill person is assigned. The record shall include the name, residence, nativity, sex and age of such mentally ill person and all other information that may be required by the rules and regulations promulgated by the [department] **authority**.

SECTION 397. ORS 426.180 is amended to read:

426.180. (1) This section applies to commitments of a person from a reservation for land-based tribes of Native Americans when, under federal law, the state does not have jurisdiction of commitments on the reservation.

(2) When this section is applicable as provided under subsection (1) of this section, a person alleged to be mentally ill by affidavit of two other persons may be admitted to a state hospital for persons with mental illness for emergency treatment, care and custody, provided such affidavit includes or is accompanied by all of the following:

(a) The circumstances constituting the emergency.

(b) Written application for admission to the hospital, executed in duplicate.

(c) A certificate to the effect that the person is so mentally ill as to be in need of immediate hospitalization.

(d) A medical history, including the name, condition, sex and age of the person.

(e) The name and address of the nearest relative or legal guardian, if any, of the person.

(3) The certificates, applications and medical histories shall be made upon forms prescribed by the [Department of Human Services] **Oregon Health Authority** and shall be executed by the county health officer or by two physicians licensed by the Oregon Medical Board, none of whom shall be related to the person by blood or marriage.

(4) When a person is admitted to a state hospital under this section, any physician treating the person shall give the person the warning under ORS 426.123.

(5) This section may be applied as provided by agreement with the ruling body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.250.

SECTION 398. ORS 426.217 is amended to read:

426.217. At any time after commitment by the court, the person, with the approval of the [Department of Human Services] **Oregon Health Authority** or its designee, may change the status of the person to that of a voluntary patient. Notwithstanding ORS 426.220, any person who alters status to that of a voluntary patient under this section shall be released from the treating facility within 72 hours of the request of the person for release.

SECTION 399. ORS 426.220 is amended to read:

426.220. (1) Pursuant to rules and regulations promulgated by the [Department of Human Services] **Oregon Health Authority**, the superintendent of any state hospital for the treatment and care of persons with mental illness may admit and hospitalize therein as a patient, any person who may have a nervous disorder or a mental illness, and who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. Except when a period of longer hospitalization has been imposed as a condition of admission, pursuant to rules and regulations of the [department] **authority**, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after the person, if at least 18 years of age, has given notice in writing of a desire to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person that such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

(2) Any person voluntarily admitted to a state hospital pursuant to this section may upon application and notice to the superintendent of the hospital concerned, be granted a temporary leave of absence from the hospital if such leave, in the opinion of the superintendent, will not interfere with the successful treatment or examination of the applicant for leave.

(3) Upon admission or discharge of a minor to or from a state hospital the superintendent shall immediately notify the parent or guardian.

SECTION 400. ORS 426.223 is amended to read:

426.223. In retaking custody of a mentally ill person who has been committed to the [Department of Human Services] **Oregon Health Authority** under ORS 426.130 and who has, without lawful authority, left the custody of the facility to which the person has been assigned under ORS 426.060, or in the case of an allegedly mentally ill person who is in custody under ORS 426.070, 426.095, 426.228 to 426.235 or 426.237 at a hospital or nonhospital facility and who has, without lawful authority, left the hospital or nonhospital facility, the facility director or designee has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person.

SECTION 401. ORS 426.225 is amended to read:

426.225. (1) If any person who has been committed to the [Department of Human Services] **Oregon Health Authority** under ORS 426.127 or 426.130 (1)(b)(B) or (C) requests, during this period of commitment, voluntary admission to a state hospital, the superintendent shall cause the person to be examined immediately by a physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, the person shall be voluntarily admitted upon request of the person.

(2) If any person who has been committed to the [department] **authority** under ORS 426.127 or 426.130 (1)(b)(B) or (C) requests, during this period of commitment, voluntary admission to a facility approved by the [department] **authority**, the administrator of the facility shall cause the person to be examined immediately by a physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, and the [department] **authority** grants approval, the person shall be voluntarily admitted upon request of the person.

SECTION 402. ORS 426.228 is amended to read:

426.228. (1) A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness. As directed by the community mental health [and developmental disabilities] program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or nonhospital facility approved by the [Department of Human Services] **Oregon Health Authority**. The officer shall prepare a written report and deliver it to the treating physician. The report shall state:

- (a) The reason for custody;
- (b) The date, time and place the person was taken into custody; and
- (c) The name of the community mental health [and developmental disabilities] program director and a telephone number where the director may be reached at all times.

(2) A peace officer shall take a person into custody when the community mental health [and developmental disabilities] program director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to believe that the person is imminently dangerous to self or to any other person. As directed by the community mental health [and developmental disabilities] program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the [department] **authority**. The community mental health [and developmental disabilities] program director shall prepare a written report that the peace officer shall deliver to the treating physician. The report shall state:

- (a) The reason for custody;
- (b) The date, time and place the person was taken into custody; and
- (c) The name of the community mental health [and developmental disabilities] program director and a telephone number where the director may be reached at all times.

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if possible, a certificate from a physician licensed by the Oregon Medical Board stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to

self or to any other person and is in need of immediate care or treatment for mental illness. The physician shall have personally examined the allegedly mentally ill person within 24 hours prior to signing the certificate.

(4) When a peace officer or other authorized person, acting under this section, delivers a person to a hospital or nonhospital facility, a physician licensed by the Oregon Medical Board shall examine the person immediately. If the physician finds the person to be in need of emergency care or treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person shall not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health [and *developmental disabilities*] program director shall return the person to the place where the person was taken into custody unless the person declines that service.

(5) A peace officer may transfer a person in custody under this section to the custody of a person authorized by the county governing body under ORS 426.233 (3). The peace officer may meet the authorized person at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized person, the peace officer shall deliver the report required under subsections (1) and (2) of this section to the authorized person.

(6) A person authorized under ORS 426.233 (3) shall take a person into custody when directed to do so by a peace officer or by a community mental health [and *developmental disabilities*] program director under ORS 426.233.

(7) A person authorized under ORS 426.233 (3) shall perform the duties of the peace officer or the community mental health [and *developmental disabilities*] program director required by this section and ORS 426.233 if the peace officer or the director has not already done so.

(8) A person authorized under ORS 426.233 (3) may transfer a person in custody under this section to the custody of another person authorized under ORS 426.233 (3) or a peace officer. The authorized person transferring custody may meet another authorized person or a peace officer at any location that is in accordance with ORS 426.140 to effect the transfer.

(9)(a) When a peace officer takes a person into custody under this section, and the peace officer reasonably suspects that the person is a foreign national, the peace officer shall inform the person of the person's right to communicate with an official from the consulate of the person's country.

(b) A peace officer is not civilly or criminally liable for failure to provide the information required by this subsection. Failure to provide the information required by this subsection does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

SECTION 403. ORS 426.231 is amended to read:

426.231. (1) A physician licensed by the Oregon Medical Board may hold a person for transportation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 431 and approved by the [Department of Human Services] **Oregon Health Authority** if:

(a) The physician believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness;

(b) The physician is not related to the person by blood or marriage; and

(c) An admitting physician at the receiving facility consents to the transporting.

(2) Before transporting the person, the physician shall prepare a written statement that:

(a) The physician has examined the person within the preceding 12 hours;

(b) An admitting physician at the receiving facility has consented to the transporting of the person for examination and admission if appropriate; and

(c) The physician believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness.

(3) The written statement required by subsection (2) of this section authorizes a peace officer, a person authorized under ORS 426.233 or the designee of a community mental health [and *developmental disabilities*] program director to transport a person to the treatment facility indicated on the statement.

SECTION 404. ORS 426.232 is amended to read:

426.232. (1) When a physician licensed to practice medicine by the Oregon Medical Board believes a person who is brought to a hospital or nonhospital facility by a peace officer under ORS 426.228, a person authorized under ORS 426.233 or a person who is at a hospital or nonhospital facility is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness, the physician may do one of the following:

(a) After consulting with a physician or a qualified mental health professional, as defined by rule of the [Department of Human Services] **Oregon Health Authority**, detain the person and cause the person to be admitted or, if the person is already admitted, cause the person to be retained in a hospital where the physician has admitting privileges or is on staff. Neither the physician nor the qualified mental health professional may be related by blood or marriage to the person.

(b) Approve the person for emergency care or treatment at a nonhospital facility approved by the [department] **authority**.

(2) When approving a person for emergency care or treatment at a nonhospital facility under this section, the physician shall notify immediately the community mental health [and developmental disabilities] program director in the county where the person was taken into custody and maintain the person, if the person is being held at a hospital, for as long as is feasible given the needs of the person for mental or physical health or safety. However, under no circumstances may the person be held for longer than five judicial days.

SECTION 405. ORS 426.233 is amended to read:

426.233. (1)(a) A community mental health [and developmental disabilities] program director operating under ORS 430.610 to 430.695 or a designee thereof, under authorization of a county governing body, may take one of the actions listed in paragraph (b) of this subsection when the community mental health [and developmental disabilities] program director or designee has probable cause to believe a person:

(A) Is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a mentally ill person placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health [and developmental disabilities] program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the [Department of Human Services] **Oregon Health Authority**;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily retained in a nonhospital facility approved by the [department] **authority**, a person approved for care or treatment at a nonhospital facility by a physician under ORS 426.232;

(C) Notify a person authorized under subsection (3) of this section to take the person into custody and direct the authorized person to remove the person in custody to a hospital or nonhospital facility approved by the [department] **authority**;

(D) Direct a person authorized under subsection (3) of this section to transport a person in custody from a hospital or a nonhospital facility approved by the [department] **authority** to another hospital or nonhospital facility approved by the [department] **authority** as provided under ORS 426.235; or

(E) Direct a person authorized under subsection (3) of this section to transport a person in custody from a facility approved by the [department] **authority** to another facility approved by the [department] **authority** as provided under ORS 426.060.

(2) A designee under subsection (1) of this section must be recommended by the community mental health [and developmental disabilities] program director, meet the standards established by

rule of the [department] **authority** and be approved by the county governing body before assuming the authority permitted under subsection (1) of this section.

(3) The county governing body may, upon recommendation by the community mental health [and developmental disabilities] program director, authorize any person to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing a person under this subsection, the county governing body shall grant the person the authority to do the following:

- (a) Accept custody from a peace officer of a person in custody under ORS 426.228;
- (b) Take custody of a person upon notification by the community mental health [and developmental disabilities] program director under the provisions of this section;
- (c) Remove a person in custody to an approved hospital or nonhospital facility as directed by the community mental health [and developmental disabilities] program director;
- (d) Transfer a person in custody to another person authorized under this subsection or a peace officer;
- (e) Transfer a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility when directed to do so by the community mental health [and developmental disabilities] program director; and
- (f) Retain a person in custody at the approved hospital or nonhospital facility until a physician makes a determination under ORS 426.232.

(4) A person authorized under subsection (3) of this section must be recommended by the community mental health [and developmental disabilities] program director, meet the standards established by rule of the [department] **authority** and be approved by the governing body before assuming the authority granted under this section.

(5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by a person authorized under subsection (3) of this section shall be the responsibility of the county whose peace officer or community mental health [and developmental disabilities] program director directs the authorized person to take custody of a person and to transport the person to a facility approved by the [department] **authority**, but the county shall not be responsible for costs that exceed the amount provided by the state for that transportation. A person authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or otherwise legally responsible persons or agencies in the same manner that costs for the transportation of other persons are charged and collected.

SECTION 406. ORS 426.234 is amended to read:

426.234. (1) At the time a person is admitted to or retained in a hospital or nonhospital facility under ORS 426.232 or 426.233, a physician, nurse or qualified mental health professional at the hospital or nonhospital facility shall:

- (a) Inform the person of the person's right to representation by or appointment of counsel as described in ORS 426.100;
- (b) Give the person the warning under ORS 426.123;
- (c) Immediately examine the allegedly mentally ill person;
- (d) Set forth, in writing, the condition of the person and the need for emergency care or treatment; and
- (e) If the physician, nurse or qualified mental health professional reasonably suspects that the person is a foreign national, inform the person of the person's right to communicate with an official from the consulate of the person's country. A physician, nurse or qualified mental health professional is not civilly or criminally liable for failure to provide the information required by this paragraph. Failure to provide the information required by this paragraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the physician shall contact the community mental health [and developmental disabilities] program director of the county in which the person resides, if the county of residence is different from the county in which the hospital is located. The community mental health [and developmental disabilities] pro-

gram director may request that the physician notify the circuit court in the county in which the person resides. If the community mental health [*and developmental disabilities*] program director does not make the request authorized by this paragraph, the physician shall notify, immediately and in writing, the circuit court in the county in which the person is hospitalized.

(b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to the hospital by a peace officer under ORS 426.228, the physician shall contact the community mental health [*and developmental disabilities*] program director of the county in which the person is hospitalized. The community mental health [*and developmental disabilities*] program director of the county in which the person is hospitalized may request that the physician notify the circuit court in the county in which the person is hospitalized. If the community mental health [*and developmental disabilities*] program director does not make the request authorized by this paragraph, the physician shall notify, immediately and in writing, the circuit court in the county in which the person was taken into custody.

(c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the physician responsible for a person admitted or retained under ORS 426.232 determines that the person is not dangerous to self or others and is not in need of emergency care or treatment for mental illness, the physician may release the person from the detention authorized by ORS 426.232. The physician shall immediately notify the circuit court notified under this subsection and the community mental health [*and developmental disabilities*] program director of the person's release from detention.

(3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS 426.233, the community mental health [*and developmental disabilities*] program director in the county where the person was taken into custody shall contact the community mental health [*and developmental disabilities*] program director of the county in which the person resides, if the county of residence is different from the county in which the person was taken into custody. The community mental health [*and developmental disabilities*] program director of the county in which the person resides may request that the community mental health [*and developmental disabilities*] program director of the county in which the person was taken into custody notify the circuit court in the county where the person resides. Otherwise, the community mental health [*and developmental disabilities*] program director of the county in which the person was taken into custody shall notify, immediately and in writing, the circuit court in the county in which the person was taken into custody.

(b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a community mental health [*and developmental disabilities*] program director, after consultation with a physician, determines that a person admitted or retained under ORS 426.233 is not dangerous to self or others and is not in need of immediate care, custody or treatment for mental illness, the community mental health [*and developmental disabilities*] program director may release the person from detention. The community mental health [*and developmental disabilities*] program director shall immediately notify the circuit court originally notified under paragraph (a) of this subsection of the person's release from detention.

(4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section, the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having a population of 100,000 or more, and when feasible in a county with a lesser population, the community mental health [*and developmental disabilities*] program director or designee who directs the peace officer or other authorized person to take a person into custody under ORS 426.233 shall not also conduct the investigation as provided for under ORS 426.074. Except when a person is being held under ORS 426.237 (1)(b), a person shall not be held under ORS 426.232 or 426.233 for more than five judicial days without a hearing being held under ORS 426.070 to 426.130.

(5) When the judge of the circuit court receives notice under subsection (2)(c) or (3)(b) of this section that a person has been released, and unless the court receives the recommendation required by ORS 426.070 (4), the judge shall dismiss the case no later than 14 days after the date the person was initially detained.

SECTION 407. ORS 426.235 is amended to read:

426.235. (1) The community mental health [*and developmental disabilities*] program director may transfer a person in custody under ORS 426.232, 426.233 or 426.237 (1)(b) to a hospital or nonhospital facility approved by the [*Department of Human Services*] **Oregon Health Authority** at any time during the period of detention.

(2) A person in custody at a hospital may be transferred from the hospital only with the consent of the treating physician and when the director of a nonhospital facility approved by the [*department*] **authority** agrees to admit the person.

(3) A person in custody at a nonhospital facility approved by the [*department*] **authority** may be transferred to a hospital approved by the [*department*] **authority** only when a physician with admitting privileges agrees to admit the person.

(4) In transporting a person between a hospital and nonhospital facility under this section, the community mental health [*and developmental disabilities*] program director has all the powers provided in ORS 133.225 and 161.255 and may compel the assistance of any peace officer or other person.

(5) When a person is transferred under this section, the community mental health [*and developmental disabilities*] program director shall notify immediately the court notified under ORS 426.234 (2) or (3) of the fact of the transfer and of the location of the person.

SECTION 408. ORS 426.236 is amended to read:

426.236. The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules necessary to carry out the provisions of ORS 426.155 and 426.228 to 426.238.

SECTION 409. ORS 426.237 is amended to read:

426.237. (1) During a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, the community mental health [*and developmental disabilities*] program director shall do one of the following:

(a) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court not proceed further in the matter if the community mental health [*and developmental disabilities*] program director does not believe the person is a mentally ill person.

(b) No later than three judicial days after initiation of a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, certify the detained person for a 14-day period of intensive treatment if:

(A) The community mental health [*and developmental disabilities*] program director and a psychiatrist, as defined by rule by the [*Department of Human Services*] **Oregon Health Authority**, have probable cause to believe the person is a mentally ill person;

(B) The community mental health [*and developmental disabilities*] program director in the county where the person resides verbally approves the arrangements for payment for the services at the hospital or nonhospital facility; and

(C) The community mental health [*and developmental disabilities*] program director locates a hospital or nonhospital facility that:

(i) Is approved by the [*department*] **authority** and the community mental health [*and developmental disabilities*] program director in the county where the person resides; and

(ii) Can, in the opinion of the community mental health [*and developmental disabilities*] program director and the psychiatrist, provide intensive care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person.

(c) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court hold a hearing under ORS 426.070 to 426.130 if the community mental health [*and developmental disabilities*] program director has probable cause to believe the person is a mentally ill person.

(2)(a) If the circuit court adopts the recommendation of the community mental health [*and developmental disabilities*] program director under subsection (1)(a) of this section, the circuit court shall enter an order releasing the person and dismissing the case. Unless the person agrees to voluntary treatment, if the person is being detained in a:

(A) Nonhospital facility, the community mental health [*and developmental disabilities*] program director shall make discharge plans and insure the discharge of the person.

(B) Hospital, the treating physician shall make discharge plans and discharge the person.

(b) Upon release of the person, the community mental health [*and developmental disabilities*] program director shall attempt to notify the person's next of kin if the person consents to the notification.

(3)(a) If the detained person is certified for treatment under subsection (1)(b) of this section, the community mental health [*and developmental disabilities*] program director shall:

(A) Deliver immediately a certificate to the court having jurisdiction under ORS 426.060; and

(B) Orally inform the person of the certification and deliver a copy of the certificate to the person.

(b) The certificate required by paragraph (a) of this subsection shall include:

(A) A written statement under oath by the community mental health [*and developmental disabilities*] program director and the psychiatrist that they have probable cause to believe the person is a mentally ill person in need of care or treatment for mental illness;

(B) A treatment plan that describes, in general terms, the types of treatment and medication to be provided to the person during the 14-day period of intensive treatment;

(C) A notice of the person's right to an attorney and that an attorney will be appointed by the court or as otherwise obtained under ORS 426.100 (3);

(D) A notice that the person has a right to request and be provided a hearing under ORS 426.070 to 426.130 at any time during the 14-day period; and

(E) The date and time the copy of the certificate was delivered to the person.

(c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court shall notify the person's attorney or appoint an attorney for the person if the person cannot afford one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall review the certificate with the person. If the person and the person's attorney consent to the certification within one judicial day of the time the certificate is delivered to the circuit court and, except as provided in subsection (4) of this section, the court shall postpone the hearing required by ORS 426.070 to 426.130 for 14 days.

(d) When a person is certified for treatment under subsection (1)(b) of this section and accepts the certification:

(A) Except as otherwise provided in this paragraph, all methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, the person shall not be subject to electroshock therapy or unduly hazardous treatment and shall receive usual and customary treatment in accordance with medical standards in the community.

(B) Except when the person expressly refuses treatment, the treating physician shall treat the person within the scope of the treatment plan provided the person under paragraph (b) of this subsection. The person's refusal of treatment constitutes sufficient grounds for the community mental health [*and developmental disabilities*] program director to request a hearing as provided in subsection (4)(a) of this section.

(C) If the person is in a hospital and the community mental health [*and developmental disabilities*] program director locates a nonhospital facility, approved by the [*department*] **authority**, that, in the opinion of the community mental health [*and developmental disabilities*] program director and the treating physician, can provide care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person, the treating physician shall discharge the person from the hospital and the community mental health [*and developmental disabilities*] program director shall remove the person to the nonhospital facility for the remainder of the 14-day intensive treatment period. If, however, in the opinion of the treating physician, the person's condition requires the person to receive medical care or treatment, the physician shall retain the person in the hospital.

(D) If the person is in a nonhospital facility, the community mental health [*and developmental disabilities*] program director shall transfer the person to a hospital approved by the [*department*] **authority** under the following conditions:

(i) If, in the opinion of a physician, the person's condition requires the person to receive medical care or treatment in a hospital; and

(ii) The physician agrees to admit the person to a hospital, approved by the [department] **authority**, where the physician has admitting privileges.

(E) If the person is transferred as provided in subparagraph (C) or (D) of this paragraph, the community mental health [and developmental disabilities] program director shall notify the circuit court, in the county where the certificate was filed, of the location of the person. The person may appeal the transfer as provided by rules of the [department] **authority**.

(e) If the person is in a hospital, the treating physician may discharge the person at any time during the 14-day period. The treating physician shall confer with the community mental health [and developmental disabilities] program director and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon discharge of the person, the treating physician shall notify the court in the county in which the certificate was filed initially.

(f) If the person is in a nonhospital facility, the community mental health [and developmental disabilities] program director may discharge the person at any time during the 14-day period. The community mental health [and developmental disabilities] program director shall consult with the treating physician and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon discharge of the person, the community mental health [and developmental disabilities] program director shall notify the court in the county in which the certificate was filed initially.

(g) The person may agree to voluntary treatment at any time during the 14-day period. When a person agrees to voluntary treatment under this paragraph, the community mental health [and developmental disabilities] program director immediately shall notify the court in the county in which the certificate was filed initially.

(h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not be held longer than 14 days from the time of consenting without a hearing as provided in ORS 426.070 to 426.130.

(i) When the court receives notification under paragraph (e), (f) or (g) of this subsection, the court shall dismiss the case.

(4) The judge of the circuit court shall immediately commence proceedings under ORS 426.070 to 426.130 when:

(a) The person consenting to 14 days of treatment or the community mental health [and developmental disabilities] program director requests a hearing. The hearing shall be held without unreasonable delay. In no case shall the person be held in a hospital or nonhospital facility longer than five judicial days after the request for a hearing is made without a hearing being held under ORS 426.070 to 426.130.

(b) The community mental health [and developmental disabilities] program director acts under subsection (1)(c) of this section. In no case shall the person be held longer than five judicial days without a hearing under this subsection.

SECTION 410. ORS 426.238 is amended to read:

426.238. The [Department of Human Services] **Oregon Health Authority** may assign classifications, as defined by rule of the [department] **authority**, to facilities that provide care and treatment for persons committed to the [department] **authority** under ORS 426.130 or provide emergency care or treatment for persons pursuant to ORS 426.070, 426.228 to 426.235 or 426.237. The [department] **authority** may authorize a facility to retake custody of a person who unlawfully leaves a facility as provided in ORS 426.223.

SECTION 411. ORS 426.241 is amended to read:

426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the [Department of Human Services] **Oregon Health Authority** and the community mental health [and developmental disabilities] program director of the county in which the facility is located, except a state mental hospital, for an allegedly mentally ill person admitted or detained under ORS 426.070,

426.140, 426.228, 426.232 or 426.233, or for a mentally ill person admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the county of which the person is a resident from state funds provided it for this purpose. The county is responsible for the cost when state funds available therefor are exhausted. The hospital or other facility shall charge to and collect from the person, third party payers or other persons or agencies otherwise legally responsible therefor, the costs of the emergency care, custody and treatment, as it would for any other patient, and any funds received shall be applied as an offset to the cost of the services provided under this section.

(2) If any person is admitted to or detained in a state mental hospital under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the [department] **authority** shall charge to and collect from the person, third party payers or other persons or agencies otherwise legally responsible therefor, the costs as it would for other patients of the state mental hospitals under the provisions of ORS 179.610 to 179.770.

(3) If any person is adjudged mentally ill under the provisions of ORS 426.130, and the person receives care and treatment in a state mental hospital, the person, third party payers or other persons or agencies otherwise legally responsible therefor, shall be required to pay for the costs of the hospitalization at the state hospital, as provided by ORS 179.610 to 179.770, if financially able to do so.

(4) For purposes of this section and ORS 426.310 "resident" means resident of the county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court-committed mentally ill person has been conditionally released.

(5)(a) The [department] **authority** may deny payment for part or all of the emergency psychiatric services provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the [department] **authority** finds, upon review, that the allegedly mentally ill person's condition did not meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible under this section shall make a request for denial of payment for emergency psychiatric services provided under ORS 426.232, 426.233 or 426.237 in writing to the [department] **authority**.

(b) The [department] **authority** may require the following to provide [the department with any information the department determines] **the authority with any information that the authority determines is** necessary to review a request for denial of payment made under this subsection [and to make a finding,] or to conduct a review of emergency psychiatric services for the purpose of planning or defining [standards in department rule] **authority rules:**

(A) A hospital or nonhospital facility approved under ORS 426.228 to 426.235 or 426.237.

(B) A physician or a person providing emergency psychiatric services under ORS 426.228 to 426.235 or 426.237.

(c) The [department] **authority** shall adopt rules necessary to carry out the purposes of this subsection.

SECTION 412. ORS 426.250 is amended to read:

426.250. The following is a nonexclusive list of responsibilities for payment of various costs related to commitment proceedings under this chapter and ORS 430.397 to 430.401 as described:

(1) Any physician or qualified person recommended by the [Department of Human Services] **Oregon Health Authority** who is employed under ORS 426.110 to make an examination as to the mental condition of a person alleged to be mentally ill shall be allowed a fee as the court in its discretion determines reasonable for the examination.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of an allegedly mentally ill person who is represented by appointed counsel, the fees and costs allowed for that witness shall

be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the allegedly mentally ill person are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply with ORS 136.570.

(3) If a person with a right to a counsel under ORS 426.100 is determined to be financially eligible for appointed counsel at state expense, the public defense services executive director shall determine and pay, as provided in ORS 135.055, the reasonable expenses related to the representation of the person and compensation for legal counsel. The expenses and compensation so allowed shall be paid by the public defense services executive director from funds available for the purpose.

(4) The [department] **authority** shall pay the costs of expenses incurred under ORS 426.100 by the Attorney General's office. Any costs for district attorneys or other counsel appointed to assume responsibility for presenting the state's case shall be paid by the county where the commitment hearing is held, subject to reimbursement under ORS 426.310.

(5) All costs incurred in connection with a proceeding under ORS 426.200, including the costs of transportation, commitment and delivery of the person, shall be paid by the county of which the person is a resident; or, if the person is not a resident of this state, then by the county from which the emergency admission was made.

(6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment of a person from a reservation for land-based tribes of Native Americans, including the cost of transportation, commitment and delivery of the person, shall be paid by the ruling body of the reservation of which the person is a resident.

SECTION 413. ORS 426.273 is amended to read:

426.273. (1) During a period of commitment of a patient under ORS 426.130, the [Department of Human Services] **Oregon Health Authority** may grant a trial visit to the patient for a period of time and under any conditions the [department] **authority** shall establish. The [department] **authority** shall only grant a trial visit under this section if the trial visit is agreed to by the community mental health [and developmental disabilities] program director, or the designee of the director, for the county in which the person would reside.

(2) When in the opinion of the [department] **authority**, the committed person can be appropriately served by outpatient care during the period of commitment, the outpatient care may be required as a condition for trial visit for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If outpatient care is required as a condition for a trial visit, the conditions shall include a designation of a facility, service or other provider to provide care or treatment.

(3) A copy of the conditions for trial visit shall be given to all of the persons listed in ORS 426.278.

(4) Any trial visit granted under this section is subject to the provisions under ORS 426.275.

(5) The director of the community mental health [and developmental disabilities] program, or designee, of the county in which a person who is on trial visit lives while on trial visit may modify the conditions for continued trial visit when such modification is in the best interest of the person. The director shall send notification of such changes and the reasons for the changes to all those who received a copy of the original conditions under ORS 426.278.

SECTION 414. ORS 426.275 is amended to read:

426.275. The following are applicable to placements of mentally ill persons that are made as conditional release under ORS 426.125, outpatient commitments under ORS 426.127 or trial visits under ORS 426.273 as described:

(1) If the person responsible under this subsection determines that the mentally ill person is failing to adhere to the terms and conditions of the placement, the responsible person shall notify the court having jurisdiction that the mentally ill person is not adhering to the terms and conditions of the placement. If the placement is an outpatient commitment under ORS 426.127 or a trial visit under ORS 426.273, the notifications shall include a copy of the conditions for the placement. The person responsible for notifying the court under this subsection is as follows:

(a) For conditional releases under ORS 426.125, the guardian, relative or friend in whose care the mentally ill person is conditionally released.

(b) For outpatient commitments under ORS 426.127, the community mental health [*and developmental disabilities*] program director, or designee of the director, of the county in which the person on outpatient commitment lives.

(c) For trial visits under ORS 426.273, the community mental health [*and developmental disabilities*] program director, or designee of the director, of the county in which the person on trial visit is to receive outpatient treatment.

(2) On its own motion, the court with jurisdiction of a mentally ill person on such placement may cause the person to be brought before it for a hearing to determine whether the person is or is not adhering to the terms and conditions of the placement. The person shall have the same rights with respect to notice, detention stay, hearing and counsel as for a hearing held under ORS 426.095. The court shall hold the hearing within five judicial days of the date the mentally ill person receives notice under this section. The court may allow postponement and detention during postponement as provided under ORS 426.095.

(3) Pursuant to the determination of the court upon hearing under this section, a person on placement shall either continue the placement on the same or modified conditions or shall be returned to the [*Department of Human Services*] **Oregon Health Authority** for involuntary care and treatment on an inpatient basis subject to discharge at the end of the commitment period or as otherwise provided under this chapter and ORS 430.397 to 430.401.

(4) If the person on placement is living in a county other than the county of the court that established the current period of commitment under ORS 426.130 during which the trial visit, conditional release or outpatient commitment takes place, the court establishing the current period of commitment shall transfer jurisdiction to the appropriate court of the county in which the person is living while on the placement and the court receiving the transfer shall accept jurisdiction.

(5) The court may proceed as provided in ORS 426.307 or this section when the court:

(a) Receives notice under ORS 426.070 or 426.228 to 426.235; and

(b) Determines that the person is a mentally ill person on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273.

SECTION 415. ORS 426.278 is amended to read:

426.278. The following persons shall be given a copy of the conditions of a placement of a mentally ill person that is made as an outpatient commitment under ORS 426.127 or as a trial visit under ORS 426.273:

(1) The committed person;

(2) The community mental health [*and developmental disabilities*] program director, or designee of the director, of the county in which the committed person is to receive outpatient treatment;

(3) The director of any facility, service or other provider designated to provide care or treatment;

(4) The court of current commitment; and

(5) The appropriate court of the county in which the committed person lives during the commitment period if the person is living in a different county than the county of the court that made the current commitment.

SECTION 416. ORS 426.292 is amended to read:

426.292. Nothing in this chapter and ORS 430.397 to 430.401 prohibits the [*Department of Human Services*] **Oregon Health Authority** from releasing a person from a hospital or other facility in which the person is being treated prior to the expiration of the period of commitment under ORS 426.130 when, in the opinion of the director of the facility or treating physician, the person is no longer mentally ill.

SECTION 417. ORS 426.300 is amended to read:

426.300. (1) The [*Department of Human Services*] **Oregon Health Authority** shall, by filing a written certificate with the last committing court and the court of residence, discharge any patient from court commitment, except one held upon an order of a court or judge having criminal juris-

diction in an action or proceeding arising out of criminal offense when in its opinion the individual is no longer a mentally ill person or when in its opinion the transfer of the individual to a voluntary status is in the best interest of the treatment of the patient.

(2) The [department] **authority** may sign applications for public assistance on behalf of those patients who may be eligible for public assistance.

SECTION 418. ORS 426.301 is amended to read:

426.301. (1) At the end of the 180-day period of commitment, any person whose status has not been changed to voluntary shall be released unless the [Department of Human Services] **Oregon Health Authority** certifies to the court in the county where the treating facility is located that the person is still mentally ill and in need of further treatment. The [department] **authority**, pursuant to its rules, may delegate to the director of the treating facility the responsibility for making the certification. The director of the treating facility shall consult with the community mental health [and developmental disabilities] program director of the county of residence prior to making the certification. If the certification is made, the person will not be released, but the director of the treating facility shall immediately issue a copy of the certification to the person and to the community mental health [and developmental disabilities] program director of the county of residence.

(2) The certification shall be served upon the person by the director of the facility wherein the person is confined or the designee of the director. The director of the facility shall inform the court in writing that service has been made and the date thereof.

(3) The certification shall advise the person of all the following:

(a) That the [department] **authority** or facility has requested that commitment be continued for an additional period of time.

(b) That the person may consult with legal counsel and that legal counsel will be provided for the person without cost if the person is unable to afford legal counsel.

(c) That the person may protest this further commitment within 14 days, and if the person does not commitment will be continued for an indefinite period of time up to 180 days.

(d) That if the person does protest a further period of commitment, the person is entitled to a hearing before the court on whether commitment should be continued.

(e) That the person may protest either orally or in writing by signing the form accompanying the certification; that the person is entitled to have a physician or other qualified person as recommended by the [department] **authority**, other than a member of the staff at the facility where the person is confined, examine the person and report to the court the results of the examination.

(f) That the person may subpoena witnesses and offer evidence on behalf of the person at the hearing.

(g) That if the person is without funds to retain legal counsel or an examining physician or qualified person as recommended by the [department] **authority**, the court will appoint legal counsel, a physician or other qualified person.

(4) Nothing in subsection (3) of this section requires the giving of the warning under ORS 426.123.

(5) The person serving the certification shall read and deliver the certification to the person and ask whether the person protests a further period of commitment. The person may protest further commitment either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the [department] **authority** or facility shall so notify the court and the court shall, without further hearing, order the commitment of the person for an additional indefinite period of time up to 180 days.

SECTION 419. ORS 426.303 is amended to read:

426.303. When the person protests a further period of commitment the [Department of Human Services] **Oregon Health Authority** or facility designated in accordance with ORS 426.301 shall immediately notify the court and the court shall have the person brought before it and shall again advise the person that the [department] **authority** or facility has requested that commitment be continued for an additional period of time and that if the person does not protest this commitment

the commitment will be continued for an indefinite period of time up to 180 days. The person shall also be informed of the rights set forth in ORS 426.301.

SECTION 420. ORS 426.307 is amended to read:

426.307. If the person requests a hearing under ORS 426.301 or if the court proceeds under ORS 426.275 (5), the following provisions apply as described:

(1) The hearing shall be conducted as promptly as possible and at a time and place as the court may direct.

(2) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement and detention during postponement as provided under ORS 426.095.

(3) The person has the right to representation by or appointment of counsel as provided under ORS 426.100 subject to ORS 135.055, 151.216 and 151.219.

(4) If the person requests an examination by a physician or other qualified person as recommended by the [Department of Human Services] **Oregon Health Authority** and is without funds to retain a physician or other qualified person for purposes of the examination, the court shall appoint a physician or other qualified person, other than a member of the staff from the facility where the person is confined, to examine the person at no expense to the person and to report to the court the results of the examination.

(5) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 do not apply to the use of medical records from the current period of commitment or to testimony related to such records or period of commitment in connection with hearings under this section. The court may consider as evidence such reports and testimony.

(6) The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physicians or other qualified persons, the court shall determine whether the person is still a mentally ill person and in need of further treatment. If in the opinion of the court the individual is still a mentally ill person by clear and convincing evidence and in need of further treatment, the court may order commitment to the [department] **authority** for an additional indefinite period of time up to 180 days.

(7) At the end of the 180-day period, the person shall be released unless the [department] **authority** or facility again certifies to the committing court that the person is still a mentally ill person and in need of further treatment, in which event the procedures set forth in ORS 426.301 to 426.307 shall be followed.

SECTION 421. ORS 426.330 is amended to read:

426.330. (1) The special funds authorized for the use of the superintendents of the Oregon State Hospital, the Blue Mountain Recovery Center and the Eastern Oregon Training Center to better enable them promptly to meet the advances and expenses necessary in the matter of transferring patients to the state hospitals are continued in existence. The superintendents shall present their claims monthly with [proper vouchers attached, showing] **vouchers that show** the expenditures from the special funds during the preceding month [, which claims, when approved by the Department of Human Services, shall be paid by warrant upon the State Treasurer against the fund appropriated to cover the cost of transporting these patients.] **to:**

(a) **The Oregon Health Authority for the transfer of patients to the Oregon State Hospital or the Blue Mountain Recovery Center; and**

(b) **The Department of Human Services for the transfer of patients to the Eastern Oregon Training Center.**

(2) **Against the fund appropriated to cover the cost of transporting patients, the State Treasurer shall pay:**

(a) **The claims of the superintendents of the Oregon State Hospital and the Blue Mountain Recovery Center that have been approved by the Oregon Health Authority; and**

(b) **The claims of the superintendent of the Eastern Oregon Training Center that have been approved by the Department of Human Services.**

SECTION 422. ORS 426.335 is amended to read:

426.335. The following limitations on liability and circumstances are applicable to situations within this chapter and ORS 430.397 to 430.401:

(1) None of the following shall in any way be held criminally or civilly liable for the making of the notification under ORS 426.070, provided the person acts in good faith, on probable cause and without malice:

(a) The community mental health [*and developmental disabilities*] program director or designee of the director.

(b) The two petitioning persons.

(c) The county health officer.

(d) Any magistrate.

(e) Any peace officer or parole and probation officer.

(f) Any physician attending the allegedly mentally ill person.

(g) The physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient.

(2) The person conducting the investigation under ORS 426.070 and 426.074 shall not be held criminally or civilly liable for conducting the investigation, provided the investigator acts in good faith, on probable cause and without malice.

(3) The person representing the state's interest under ORS 426.100 shall not be held criminally or civilly liable for performing responsibilities under ORS 426.100 as long as the person acts in good faith and without malice.

(4) No person appointed under ORS 426.110 to conduct an examination under ORS 426.120 shall be held criminally or civilly liable for actions pursuant to ORS 426.120 if the examiner acts in good faith and without malice.

(5) No physician, hospital or judge shall be held criminally or civilly liable for actions pursuant to ORS 426.228, 426.231, 426.232, 426.234 or 426.235 if the physician, hospital or judge acts in good faith, on probable cause and without malice.

(6) No peace officer, person authorized under ORS 426.233, community mental health director or designee, hospital or other facility, physician or judge shall in any way be held criminally or civilly liable for actions pursuant to ORS 426.228 to 426.235 if the individual or facility acts in good faith, on probable cause and without malice.

(7) Any guardian, relative or friend of a mentally ill person who assumes responsibility for the mentally ill person under a conditional release under ORS 426.125 shall not be liable for any damages that are sustained by any person on account of the misconduct of the mentally ill person while on conditional release if the guardian, relative or friend acts in good faith and without malice.

(8) The persons designated in this subsection shall not be liable for damages that are sustained by any person or property on account of the misconduct of a mentally ill person while the mentally ill person is on outpatient commitment under ORS 426.127 if the designated person acts without willful and wanton neglect of duty. This subsection is applicable to all of the following:

(a) The community mental health [*and developmental disabilities*] program director and the designee of the director for the county in which the committed person resides.

(b) The superintendent or director of any staff of any facility where the mentally ill person receives treatment during the outpatient commitment.

(c) The Director of [*Human Services*] **the Oregon Health Authority**.

(d) The physician and the facility granting an outpatient commitment to a patient.

(9) For trial visits granted under ORS 426.273 and 426.275:

(a) None of the following shall be liable for a patient's expenses while on trial visit:

(A) The physician and the facility granting a trial visit to a patient;

(B) The superintendent or director of the facility granting a trial visit;

(C) The Director of [*Human Services*] **the Oregon Health Authority**; and

(D) The chief medical officer of the facility.

(b) The following persons shall not be liable for damages that are sustained by any person on account of the misconduct of such patient while on trial visit if the person acts without willful and wanton neglect of duty:

(A) The community mental health [*and developmental disabilities*] program director for the county in which the person resides;

(B) The superintendent, director or chief medical officer of any facility granting a trial visit to a patient;

(C) The physician responsible for the patient's trial visit;

(D) The Director of [*Human Services*] **the Oregon Health Authority**; or

(E) The employees and agents of persons listed in this paragraph.

SECTION 423. ORS 426.370 is amended to read:

426.370. A community mental health [*and developmental disabilities*] program director or designee may withhold information obtained during an investigation under ORS 426.070, 426.228, 426.232, 426.233 or 426.234 if the community mental health [*and developmental disabilities*] program director determines:

(1) That information was not included in its investigation report or otherwise used in a material way to support a determination by the community mental health [*and developmental disabilities*] program director that there was probable cause to believe a person was a mentally ill person; and

(2) Release of the information would constitute a clear and immediate danger to any person.

SECTION 424. ORS 426.385 is amended to read:

426.385. (1) Every mentally ill person committed to the [*Department of Human Services*] **Oregon Health Authority** shall have the right to:

(a) Communicate freely in person and by reasonable access to telephones;

(b) Send and receive sealed mail, except that this right may be limited for security reasons in state institutions as described in ORS 426.010;

(c) Wear the clothing of the person;

(d) Keep personal possessions, including toilet articles;

(e) Religious freedom;

(f) A private storage area with free access thereto;

(g) Be furnished with a reasonable supply of writing materials and stamps;

(h) A written treatment plan, kept current with the progress of the person;

(i) Be represented by counsel whenever the substantial rights of the person may be affected;

(j) Petition for a writ of habeas corpus;

(k) Not be required to perform routine labor tasks of the facility except those essential for treatment;

(L) Be given reasonable compensation for all work performed other than personal housekeeping duties;

(m) Daily access to fresh air and the outdoors, except that this right may be limited when it would create significant risk of harm to the person or others;

(n) Such other rights as may be specified by rule; and

(o) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of real property, execute instruments, make purchases, enter contractual relationships, and vote, unless the person has been adjudicated incompetent and has not been restored to legal capacity. Disposal of personal property in possession of the person in a state institution described in ORS 426.010 is subject to limitation for security reasons.

(2)(a) A person must be immediately informed, verbally and in writing, of any limitation:

(A) Of the right to send or receive sealed mail under subsection (1)(b) of this section;

(B) Regarding the disposal of personal property under subsection (1)(o) of this section; and

(C) Of the right to daily access to fresh air and the outdoors under subsection (1)(m) of this section.

(b) Any limitation under this subsection and the reasons for the limitation must be stated in the person's written treatment plan.

(c) The person has the right to challenge any limitation under this subsection pursuant to rules adopted by the [department] **authority**. The person must be informed, verbally and in writing, of this right.

(3) Mentally ill persons committed to the [department] **authority** shall have the right to be free from potentially unusual or hazardous treatment procedures, including convulsive therapy, unless they have given their express and informed consent or authorized the treatment pursuant to ORS 127.700 to 127.737. This right may be denied to such persons for good cause as defined in administrative rule only by the director of the facility in which the person is confined, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the patient's treatment record and shall include the reasons for the denial. No patient shall be subjected to psychosurgery, as defined in ORS 677.190 (22)(b).

(4) Mechanical restraints shall not be applied to a person admitted to a facility unless it is determined by the chief medical officer of the facility or designee to be required by the medical needs of the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the chief medical officer of the facility or designee.

(5) Nothing in this section prevents the [department] **authority** from acting to exclude contraband from its facilities and to prevent possession or use of contraband in its facilities.

(6) As used in this section:

(a) "Contraband" has the meaning given that term in ORS 162.135.

(b) "Security reasons" means the protection of the mentally ill person from serious and immediate harm and the protection of others from threats or harassment as defined by rule of the [department] **authority**.

SECTION 425. ORS 426.395 is amended to read:

426.395. A simple and clear statement of rights guaranteed to patients committed to the [Department of Human Services] **Oregon Health Authority** shall be prominently posted in each room frequented by patients in all facilities housing such patients. A copy of the statement shall be given to each patient upon admission and sent, upon request, to the legal counsel, guardian, relative or friend of the patient. The statement shall include the name, address and telephone number of the system described in ORS 192.517 (1).

SECTION 426. ORS 426.415 is amended to read:

426.415. (1) The Director of [Human Services] **the Oregon Health Authority** may adopt rules establishing requirements and procedures for licensing persons who may order, monitor and evaluate the use of restraint and seclusion in facilities providing intensive mental health treatment services to individuals under 21 years of age.

(2) A license may not be issued or renewed under rules adopted under this section unless the person applying for the license or renewal:

(a) Is employed by or providing services under contract with a provider that is certified by the [Department of Human Services] **Oregon Health Authority** to provide intensive mental health treatment services for individuals under 21 years of age;

(b) Has successfully completed an emergency safety intervention training program approved by the director;

(c) Provides documented evidence of the person's ability to assess the psychological and physical well-being of individuals under 21 years of age;

(d) Meets other qualifications established by the director by rule for qualified mental health professionals; and

(e) Demonstrates knowledge of federal and state rules governing the use of restraint and seclusion in intensive mental health treatment programs for individuals under 21 years of age.

(3) The rules described in subsection (1) of this section shall:

(a) Specify procedures for issuing and renewing licenses;

- (b) Establish a term of licensure;
- (c) Require a person issued a license to satisfy annual training requirements relating to emergency safety intervention procedures;
- (d) Specify grounds for denial, suspension or revocation of a license;
- (e) Set any license or renewal fees the director determines are necessary; and
- (f) Specify any other licensing provisions the director determines are necessary to comply with federal law or regulations or to operate a licensing system described in this section.

SECTION 427. ORS 426.495 is amended to read:

426.495. (1) As used in ORS 426.490 to 426.500, unless the context requires otherwise:

(a) "Case manager" means a person who works on a continuing basis with a person with a chronic mental illness and is responsible for assuring the continuity of the various services called for in the discharge plan of the person with a chronic mental illness including services for basic personal maintenance, mental and personal treatment, and appropriate education and employment.

(b) "Discharge plan" means a written plan prepared jointly with the person with a chronic mental illness, mental health staff and case manager prior to discharge, prescribing for the basic and special needs of the person upon release from the hospital.

(c) "Person with a chronic mental illness" means an individual who is:

(A) Eighteen years of age or older; and

(B) Diagnosed by a psychiatrist, a licensed clinical psychologist or a nonmedical examiner certified by the [Department of Human Services] **Oregon Health Authority** as having chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic mental disorder other than those caused by substance abuse.

(2) For purposes of providing services in the community, the [department] **authority** may adopt rules consistent with accepted professional practices in the fields of psychology and psychiatry to specify other criteria for determining who is a person with a chronic mental illness.

SECTION 428. ORS 426.500 is amended to read:

426.500. For the purpose of carrying out the policy and intent of ORS 426.490 to 426.500, the [Department of Human Services] **Oregon Health Authority** shall:

(1) Adopt rules for the administration of ORS 426.490 to 426.500;

(2) Prepare a written discharge plan for each person with a chronic mental illness who is a patient at a state mental institution or who is committed to the [department] **authority** pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380;

(3) Ensure that case managers are provided for each person with a chronic mental illness described in subsection (2) of this section; and

(4) Disburse from any available funds:

(a) Funds for one LINC model in the area served by F. H. Dammasch State Hospital and one LINC model in the area served by the Oregon State Hospital licensed under ORS 443.415;

(b) Discretionary funds for services necessary to implement a discharge plan, including but not limited to transportation, medication, recreation and socialization; and

(c) Funds to provide day treatment services, community psychiatric inpatient services, and work activity services for persons with chronic mental illness when needed.

SECTION 429. ORS 426.502 is amended to read:

426.502. As used in ORS 426.502 to 426.508:

(1) "**Authority**" means the **Oregon Health Authority**.

[(1)] (2) "Community housing" means property and related equipment that are used or could be used to house persons with chronic mental illness and their care providers. "Community housing" includes single-family housing and multiple-unit residential housing.

[(2)] (3) "Construct" means to build, install, assemble, expand, alter, convert, replace or relocate. "Construct" includes to install equipment and to prepare a site.

[(3)] "Department" means the Department of Human Services.]

(4) "Equipment" means furnishings, fixtures or appliances that are used or could be used to provide care in community housing.

(5) "Multiple-unit residential housing" means housing that provides two or more living units and spaces for common use by the occupants in social and recreational activities. "Multiple-unit residential housing" may include nonhousing facilities incidental or appurtenant to the housing that, in the determination of the [department] **authority**, improve the quality of the housing.

(6) "Person with a chronic mental illness" has the meaning given that term in ORS 426.495.

(7) "Single-family housing" means a detached living unit with common living room and dining facilities for at least three occupants with chronic mental illness. "Single-family housing" may include nonhousing facilities incidental or appurtenant to the housing that, in the determination of the [department] **authority**, improve the quality of the housing.

SECTION 430. ORS 426.504 is amended to read:

426.504. (1) The [Department of Human Services] **Oregon Health Authority** may, through contract or otherwise, acquire, purchase, receive, hold, exchange, demolish, construct, lease, maintain, repair, replace, improve and equip community housing for the purpose of housing persons with chronic mental illness.

(2) The [department] **authority** may dispose of community housing acquired under subsection (1) of this section in a public or private sale, upon such terms and conditions as the [department] **authority** considers advisable to increase the quality and quantity of community housing available for persons with chronic mental illness. Except as provided in subsection (3) of this section, in any instrument conveying fee title to community housing, the [department] **authority** shall include language that restricts the use of the community housing to housing for persons with chronic mental illness. Such restriction is not a violation of ORS 93.270.

(3) If the [department] **authority** determines that community housing acquired under subsection (1) of this section is no longer suitable for use as community housing, the [department] **authority** may sell or otherwise dispose of the community housing without including in any instrument conveying fee title to the community housing any language that restricts the use of the community housing. Proceeds from the sale or disposition of community housing under this subsection are considered proceeds described in ORS 426.506 (4)(c).

(4) When exercising the [authority] **power** granted to the [department] **authority** under this section, the [department] **authority** is not subject to ORS chapter 273 or ORS 270.100 to 270.190, 276.900 to 276.915 or 279A.250 to 279A.290.

SECTION 431. ORS 426.506 is amended to read:

426.506. (1) There is created in the State Treasury, separate and distinct from the General Fund, the Community Mental Health Housing Fund. All earnings on investments of moneys in the Community Mental Health Housing Fund shall accrue to the fund. Interest earned on moneys in the fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the [Department of Human Services] **Oregon Health Authority** to carry out the provisions of ORS 426.504.

(2) The Community Mental Health Housing Fund shall be administered by the [department] **authority** to provide housing for persons with chronic mental illness. As used in this subsection, "housing" may include acquisition, maintenance, repair, furnishings and equipment.

(3)(a) There is established within the Community Mental Health Housing Fund a Community Housing Trust Account. With approval of the State Treasurer and upon request of the Director of [Human Services] **the Oregon Health Authority**, moneys in the account may be invested as provided in ORS 293.701 to 293.820.

(b) Notwithstanding the provisions of ORS 270.150, the [department] **authority** shall deposit into the Community Housing Trust Account the proceeds, less costs to the state, received by the [department] **authority** from the sale of F. H. Dammasch State Hospital property under ORS 426.508. The [department] **authority** may expend, for the purposes set forth in ORS 426.504, any earnings credited to the account, including any interest earned on moneys deposited in the account, and up to five percent of the sale proceeds initially credited to the account by the Oregon Department of Administrative Services. At least 95 percent of the sale proceeds shall remain in the account in perpetuity. Proceeds deposited in the account may not be commingled with proceeds from the sale

of any surplus real property owned, operated or controlled by the [*Department of Human Services*] **authority** and used as a state training center.

(c) Interest earned on moneys in the Community Housing Trust Account may be expended in the following manner:

(A) Seventy percent of interest earned on deposits in the account shall be expended for community housing purposes; and

(B) Thirty percent of interest earned on deposits in the account shall be expended for institutional housing purposes.

(d) Interest earned on deposits in the Community Housing Trust Account shall not be used to support operating expenses of the [*department*] **authority**.

(4) The Community Mental Health Housing Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Sale proceeds and earnings from the account under subsection (3) of this section;

(c) Proceeds from the sale, transfer or lease of any surplus real property owned, operated or controlled by the [*department*] **authority** and used as community housing;

(d) Moneys reallocated from other areas of the [*department's*] **authority's** budget;

(e) Interest and earnings credited to the fund; and

(f) Gifts of money or other property from any source, to be used for the purposes of developing housing for persons with chronic mental illness.

(5) The [*department*] **authority** shall adopt policies:

(a) To establish priorities for the use of moneys in the Community Mental Health Housing Fund for the sole purpose of developing housing for persons with chronic mental illness;

(b) To match public and private moneys available from other sources for developing housing for persons with chronic mental illness; and

(c) To administer the fund in a manner that will not exceed the State Treasury's maximum cost per transaction.

(6) The [*Department of Human Services*] **authority** shall collaborate with the Housing and Community Services Department to ensure the highest return and best value for community housing from the Community Mental Health Housing Fund.

(7) The [*Department of Human Services*] **authority** shall provide a report of revenues to and expenditures from the Community Mental Health Housing Fund as part of its budget submission to the Governor and Legislative Assembly under ORS chapter 291.

SECTION 432. ORS 426.508 is amended to read:

426.508. (1) Notwithstanding ORS 421.611 to 421.630 or any actions taken under ORS 421.611 to 421.630, the Department of Corrections shall transfer the real property known as the F. H. Dammasch State Hospital and all improvements to the Oregon Department of Administrative Services to be sold for the benefit of the [*Department of Human Services*] **Oregon Health Authority**.

(2)(a) Notwithstanding ORS 270.100 to 270.190, and except as provided in subsection (4) of this section, the Oregon Department of Administrative Services shall sell or otherwise convey the real property known as the F. H. Dammasch State Hospital in a manner consistent with the provisions of this section. Conveyance shall not include transfer to a state agency. The sale price of the real property shall equal or exceed the fair market value of the real property. The Oregon Department of Administrative Services shall engage the services of a licensed real estate broker or principal real estate broker to facilitate the sale of the real property.

(b) The Oregon Department of Administrative Services shall retain from the sale or other conveyance of the real property those costs incurred by the state in selling or conveying the real property, including costs incurred by the Department of Corrections in transferring the real property to the Oregon Department of Administrative Services. The remaining proceeds from the sale or other conveyance shall be transferred to the Community Housing Trust Account created under ORS 426.506 (3).

(3) Redevelopment of the real property formerly occupied by the F. H. Dammasch State Hospital shall be consistent with the Dammasch Area Transportation Efficient Land Use Plan developed by

Clackamas County, the City of Wilsonville, the Oregon Department of Administrative Services, the Department of Land Conservation and Development, the Department of Transportation, the State Housing Council, the [Department of Human Services] **Oregon Health Authority** and the Department of State Lands.

(4) The Oregon Department of Administrative Services shall reserve from the sale of the real property under subsection (2) of this section not more than 10 acres. The real property reserved from sale shall be transferred to the [Department of Human Services for use by the Department of Human Services to develop community housing for persons with chronic mental illness. The Oregon Department of Administrative Services and the Department of Human Services shall jointly coordinate with the City of Wilsonville to identify the real property reserved from sale under this subsection] **Oregon Health Authority for use by the authority to develop community housing for persons with chronic mental illness. The department and the authority shall jointly coordinate with the City of Wilsonville to identify the real property reserved from sale under this subsection.**

SECTION 433. ORS 426.650 is amended to read:

426.650. (1) Pursuant to rules promulgated by the [Department of Human Services] **Oregon Health Authority**, the superintendent of any state hospital for the treatment and care of persons with mental illness may admit and hospitalize therein as a patient any person in need of medical or mental therapeutic treatment as a sexually dangerous person who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. Pursuant to rules and regulations of the [department] **authority**, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after the person, if at least 18 years of age, has given notice in writing of desire to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person that such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

(2) Any person voluntarily admitted to a state facility pursuant to this section may upon application and notice to the superintendent of the institution concerned, be granted a temporary leave of absence from the institution if such leave, in the opinion of the chief medical officer, will not interfere with the successful treatment or examination of the applicant.

SECTION 434. ORS 426.670 is amended to read:

426.670. The [Department of Human Services] **Oregon Health Authority** hereby is directed and authorized to establish and operate treatment programs, either separately within an existing state Department of Corrections institution, as part of an existing program within [a Department of Human Services] **an Oregon Health Authority** institution, or in specified and approved sites in the community to receive, treat, study and retain in custody, as required, such sexually dangerous persons as are committed under ORS 426.510 to 426.670.

SECTION 435. ORS 426.675 is amended to read:

426.675. (1) When a defendant has been convicted of a sexual offense under ORS 163.305 to 163.467 or 163.525 and there is probable cause to believe the defendant is a sexually dangerous person, the court prior to imposing sentence may continue the time for sentencing and commit the defendant to a facility designated under ORS 426.670 for a period not to exceed 30 days for evaluation and report.

(2) If the facility reports to the court that the defendant is a sexually dangerous person and that treatment available may reduce the risk of future sexual offenses, the court shall hold a hearing to determine by clear and convincing evidence that the defendant is a sexually dangerous person. The state and the defendant shall have the right to call and cross-examine witnesses at such hearing. The defendant may waive the hearing required by this subsection.

(3) If the court finds that the defendant is a sexually dangerous person and that treatment is available which will reduce the risk of future sexual offenses, it may, in its discretion at the time of sentencing:

(a) Sentence the defendant to probation on the condition that the person participate in and successfully complete a treatment program for sexually dangerous persons pursuant to ORS 426.670;

(b) Impose a sentence of imprisonment with the order that the defendant be assigned by the Director of the Department of Corrections to participate in a treatment program for sexually dangerous persons pursuant to ORS 426.670. The Department of Corrections and [*Department of Human Services*] **the Oregon Health Authority** shall jointly adopt administrative rules to coordinate assignment and treatment of prisoners under this subsection; or

(c) Impose any other sentence authorized by law.

SECTION 436. ORS 426.680 is amended to read:

426.680. (1) The superintendent of the facility designated under ORS 426.670 to receive commitments for medical or mental therapeutic treatment of sexually dangerous persons may grant a trial visit to a defendant committed as a condition of probation where:

(a) The trial visit is not inconsistent with the terms and conditions of probation; and

(b) The trial visit is agreed to by the community mental health [*and developmental disabilities*] program director for the county in which the person would reside.

(2) Trial visit here shall correspond to trial visit as described in ORS 426.273 to 426.292 and 426.335, except that the length of a trial visit may be for the duration of the period of probation, subject to the consent of the sentencing court.

SECTION 437. ORS 427.104 is amended to read:

427.104. The Department of Human Services with funds appropriated for that purpose by the legislature, shall establish and operate a Developmental Disability Diagnosis and Evaluation Service for people with mental retardation or developmental disabilities. The Developmental Disability Diagnosis and Evaluation Service shall provide all or part of diagnostic evaluations, as defined in ORS 427.105, when complete evaluations are not available through community [*mental health and*] developmental disabilities programs, and the Developmental Disability Diagnosis and Evaluation Service shall:

(1) Provide consultation and training to community [*mental health and*] developmental disabilities programs in the development of local diagnosis and evaluation services;

(2) Develop and periodically revise department standards and procedures for diagnosis and evaluation services;

(3) Coordinate diagnostic evaluations statewide to minimize duplication of tests and examinations;

(4) Approve applications for admission to the training center;

(5) Provide necessary information to the State Training Center Review Board when a decision of the Developmental Disability Diagnosis and Evaluation Service regarding admission to the state training center is appealed by the person, the parents or legal guardian of the person;

(6) Provide consultation to appropriate agencies and individuals regarding persons evaluated; and

(7) Process and coordinate all placements of residents from the state training center.

SECTION 437a. ORS 427.108 is amended to read:

427.108. The Department of Human Services shall establish fee schedules for services under ORS 427.104. All fees collected under this section shall be deposited in the [*Mental Health and Developmental Disability*] **Department of Human Services Account**.

SECTION 438. ORS 427.112 is amended to read:

427.112. A general hospital, community [*mental health and*] developmental disabilities program, or other facility, except a state training center, providing diagnostic evaluations under ORS 427.105 shall charge to and collect from the person, third party payers, or other persons or agencies otherwise legally responsible therefor, the costs of the diagnostic evaluation or emergency care, custody and treatment, as the facility would for any other client or resident.

SECTION 439. ORS 427.180 is amended to read:

427.180. (1) A person shall be admitted to a state training center only after:

(a) The person has either been committed to the Department of Human Services as a mentally retarded person under ORS 427.290, or an application for admission has been filed either by the person or by another in the manner set forth in ORS 427.185;

(b) The person has undergone a diagnostic evaluation as defined in ORS 427.105 and the completed evaluation has been provided to the Developmental Disability Diagnosis and Evaluation Service established under ORS 427.104; and

(c) Either the Developmental Disability Diagnosis and Evaluation Service or, upon appeal, the Director of Human Services finds that the person meets the requirements set out in subsection (2) of this section and approves the person for admission.

(2) A person shall be approved for admission under subsection (1)(c) of this section if the following conditions exist:

(a) The person is mentally retarded;

(b) Programs and services needed by the person are available in a training center and comparable services are not available in community [*mental health and*] developmental disabilities programs or other human service agencies;

(c) Admission to a state training center is the best available plan and in the best interest of the person, family of the person and the community; and

(d) Space is available or may become available within a reasonable time in an appropriate unit of a state training center.

SECTION 440. ORS 427.185 is amended to read:

427.185. (1) A person seeking admission to a state training center shall apply on forms and in the manner established by the Department of Human Services, to the community [*mental health and*] developmental disabilities program serving the area in which the applicant currently resides. If the person seeking admission is a minor or is incapacitated, the application shall be made by the person's parents or guardian or by the person entitled to custody.

(2) Upon receipt of an application, the community [*mental health and*] developmental disabilities program shall provide or arrange a diagnostic evaluation, meeting the requirements set forth in ORS 427.105, of the person on whose behalf the application for admission is made at a facility approved by the department. The community [*mental health and*] developmental disabilities program or its designee shall schedule a date for the diagnostic evaluation and notify the applicant or person having custody. No person shall be kept in residence in a training center for a diagnostic evaluation longer than 10 business days.

(3) The costs of transportation to the community [*mental health and*] developmental disabilities program or designated facility shall be paid by the applicant. The cost of maintenance for any period of residence in a training center shall be determined as provided for in ORS 179.610 to 179.770 and paid by the applicant or other persons or agencies legally responsible.

SECTION 441. ORS 427.190 is amended to read:

427.190. (1) Upon receipt of a completed diagnostic evaluation, the community [*mental health and*] developmental disabilities program shall forward the completed application and the completed diagnostic evaluation to the Developmental Disability Diagnosis and Evaluation Service.

(2) Upon receipt of a completed application and diagnostic evaluation from the community [*mental health and*] developmental disabilities program, the Developmental Disability Diagnosis and Evaluation Service shall promptly determine the eligibility and priority for admission in accordance with ORS 427.180 and 427.195.

(3) When space in an appropriate unit of a training center becomes available for a person otherwise eligible for admission under ORS 427.180, the Developmental Disability Diagnosis and Evaluation Service shall notify the applicant or, if the person is committed, the director of the community [*mental health and*] developmental disabilities program in the county of the person's residence that the person has been accepted for admission. The notice shall establish the date when the admission is to be made. If the person does not appear at the designated training center within 15 days after the date established for admission, the application of the person may be canceled by the Developmental Disability Diagnosis and Evaluation Service.

(4) A person applying for admission to a state training center or, if the person is a minor or incapacitated, the person applying for admission on behalf of the minor or incapacitated person may appeal any decision of the Developmental Disability Diagnosis and Evaluation Service regarding admission to the Director of Human Services. The appeal shall be filed within 30 days of receipt of notice of the decision and shall set forth the reasons for the appeal. The director shall convene the State Training Center Review Board, established under ORS 427.205, within 30 days of receipt of the appeal. The board shall advise the director regarding disposition of the appeal, and the director shall make a decision on the appeal within 30 days of the meeting of the board. The decision of the director shall be final.

SECTION 442. ORS 427.235 is amended to read:

427.235. (1) Any two persons may notify the judge of the court having probate jurisdiction for the county or the circuit court, if it is not the probate court but its jurisdiction has been extended to include commitment of the mentally retarded under ORS 3.275, that a person within the county is a mentally retarded person in need of commitment for residential care, treatment and training. Such notice shall be in writing and sworn to before an officer qualified to administer an oath and shall set forth the facts sufficient to show the need for investigation. The circuit court shall forward notice to the community [*mental health and*] developmental disabilities program director in the county if it finds the notice sufficient to show the need for investigation. The director or the designee of the director shall immediately investigate to determine whether the person is in fact a mentally retarded person. However, if the petition for commitment is from a state training center, the duties of the community [*mental health and*] developmental disabilities program director under ORS 427.235 to 427.270, 427.280 and 427.285 shall be the responsibility of the superintendent of the state training center or the designee of the superintendent.

(2) Any person who acts in good faith shall not be held civilly liable for making of the notification under subsection (1) of this section.

(3) Any investigation conducted by the community [*mental health and*] developmental disabilities program director or the designee of the director under subsection (1) of this section shall commence with an interview or examination of the allegedly mentally retarded person, where possible, in the home of the allegedly mentally retarded person or other place familiar to the allegedly mentally retarded person. Further investigation if warranted shall include a diagnostic evaluation as defined in ORS 427.105 and may also include interviews with the allegedly mentally retarded person's relatives, neighbors, teachers and physician. The investigation shall also determine if any alternatives to commitment are available. The investigator shall also determine and recommend to the court whether the person is incapacitated and in need of a guardian or conservator.

(4) The investigation report shall be submitted to the court within 30 days of receipt of notice from the court. A copy of the investigation report and diagnostic evaluation, if any, shall also be made available to the Developmental Disability Diagnosis and Evaluation Service and to the allegedly mentally retarded person and, where the allegedly mentally retarded person is a minor or incapacitated, to the parents of the allegedly mentally retarded person or guardian as soon as possible after its completion but in any case prior to a hearing held under ORS 427.245.

(5) Any person conducting an evaluation or investigation under this section shall in no way be held civilly liable for conducting the investigation or performing the diagnostic evaluation.

(6) If requested by a person conducting an investigation under this section, a physician who has examined the allegedly mentally retarded person may, with patient authorization or in response to a court order, provide any relevant information the physician has regarding the allegedly mentally retarded person.

SECTION 443. ORS 427.245 is amended to read:

427.245. (1) If the court, following receipt of an investigation report under ORS 427.235, concludes that there is probable cause to believe that the subject of the investigation is in fact a mentally retarded person, it shall, through the issuance of a citation as provided in subsection (2) of this section, cause the person to be brought before it at such time and place as it may direct for a hearing to determine whether the person is mentally retarded. The person shall be given the op-

portunity to appear at the hearing. If the person is detained pursuant to ORS 427.255, the court shall hold the hearing within seven judicial days.

(2) Upon a determination under subsection (1) of this section that probable cause exists to believe that the person is in fact a mentally retarded person, the judge shall cause a citation to issue to the person or, if the person is a minor or incapacitated, to the parent or legal guardian of the person. The citation shall state the specific reasons the person is believed to be mentally retarded. The citation shall also contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, the right to have legal counsel appointed immediately if so requested, the right to subpoena witnesses in behalf of the person to testify at the hearing, the right to cross-examine all witnesses and such other information as the court may direct. The citation shall be served on the person by the community [*mental health and*] developmental disabilities program director or the designee of the director delivering a duly certified copy of the original to the person prior to the hearing. The person, the parents of the person or the legal guardian of the person shall have the opportunity to consult with legal counsel prior to being brought before the court. The community [*mental health and*] developmental disabilities program director or the designee of the director shall advise the person of the purpose of the citation and the possible consequences of the proceeding.

SECTION 444. ORS 427.255 is amended to read:

427.255. (1) If the court finds that there is probable cause to believe that failure to take an allegedly mentally retarded person into custody pending an investigation or hearing would pose an imminent and serious danger to the person or to others, the judge may issue a warrant of detention to either the community [*mental health and*] developmental disabilities program director or the sheriff of the county directing that the person or the designee of the person take the allegedly mentally retarded person into custody and produce the mentally retarded person at the time and place stated in the warrant. At the time the person is taken into custody, the person taking the person into custody shall advise the allegedly mentally retarded person or, if the allegedly mentally retarded person is incapacitated or a minor, the parents or guardian of the allegedly mentally retarded person of the person's right to counsel, to have legal counsel appointed if the allegedly mentally retarded person is unable to afford legal counsel, and, if requested, to have legal counsel appointed immediately.

(2) A person taken into custody under subsection (1) of this section shall be provided all care, custody, evaluation and treatment required for the mental and physical health and safety of the person and the director of the facility retaining custody shall report any care, custody, evaluation or treatment provided the person to the court as required by ORS 427.280. Any diagnostic evaluation performed on such person shall be consistent with Department of Human Services rules and ORS 427.105. Any prescription or administration of drugs shall be the sole responsibility of the treating physician. The allegedly mentally retarded person shall have the right to the least hazardous treatment procedures while in custody, and the treating physician shall be notified immediately of the use of any mechanical restraints on the person. A note of each use of mechanical restraint and the reasons therefor shall be made a part of the person's clinical record over the signature of the treating physician.

SECTION 445. ORS 427.275 is amended to read:

427.275. (1) Any physician or psychologist employed by the judge to make a diagnostic evaluation of a person alleged to be mentally retarded shall be allowed a fee as the court in its discretion determines reasonable for the evaluation. The costs of the evaluation shall be paid by the county of residence of the person or, if the person has no residence within the state, by the county in which the person is taken into custody. The county shall not be held responsible for the costs of prior examinations or tests reported to the court, or of diagnostic evaluations performed or arranged by the community [*mental health and*] developmental disabilities program or Department of Human Services.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to

136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of an allegedly mentally retarded person who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055.

SECTION 446. ORS 427.280 is amended to read:

427.280. The court shall be fully advised by the community [*mental health and*] developmental disabilities program director or, when the person has been detained under ORS 427.255, by the director of the facility retaining custody of all treatment known to have been administered to the allegedly mentally retarded person after a citation has been issued to the person.

SECTION 447. ORS 427.300 is amended to read:

427.300. (1) The Department of Human Services may, at its discretion, direct any court-committed mentally retarded person to the facility best able to treat and train the person. The authority of the department on such matters shall be final.

(2) At any time, for good cause and in the best interest of the mentally retarded person, the department may decide to transfer a resident from one facility to another or discharge a resident as no longer in need of residential care, treatment or training in a state training center. Fifteen days prior to department action, the department shall notify the resident and the parent, guardian or person entitled to custody of the resident by certified mail of its decision. The notice shall indicate the right of the aforementioned parties to appeal this decision to the State Training Center Review Board in writing within 10 days after receipt of notice. Within 30 days from the date the appeal is received by the department, the State Training Center Review Board shall hold a hearing at which the department and the person having filed the appeal shall present their case and shall communicate its recommendation to the Director of Human Services pursuant to ORS 427.205 (4)(b); and the director shall communicate the decision of the director by certified mail to the appealing party.

(3) The department, pursuant to its rules, may delegate to a community [*mental health and*] developmental disabilities program director the responsibility for assignment of mentally retarded persons to suitable facilities or transfer between such facilities under conditions which the department may define. Any voluntary client or resident shall be released from the treating or training facility within 15 business days of the request of the client or resident for release, unless commitment procedures are initiated under ORS 427.235.

SECTION 448. ORS 427.306 is amended to read:

427.306. (1) No person, not incarcerated upon a criminal charge, who has been alleged or adjudged a mentally retarded person shall be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated.

(2) No person alleged or adjudged a mentally retarded person, not incarcerated on a criminal charge, shall be confined without an attendant in charge of the person. If not confined in a community hospital, the community [*mental health and*] developmental disabilities program director or sheriff having the person in custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person. The person shall be detained in the least restrictive setting consistent with the person's emotional and physical needs and the protection of others.

SECTION 449. ORS 428.210 is amended to read:

428.210. As used in ORS 428.210 to 428.270:

(1) **“Authority” means the Oregon Health Authority.**

[(1)] (2) “Department” means the Department of Human Services.

[(2)] (3) “Foreign hospital” means an institution in any other state which corresponds to the institutions defined in subsection [(7)] (8) of this section.

[(3)] (4) “Nonresident” means any person who is not a resident of this state as defined in subsection [(6)] (7) of this section.

[(4)] (5) "Other state" includes all the states, territories, possessions, commonwealths and agencies of the United States and the District of Columbia, with the exception of the State of Oregon.

[(5)] (6) "Patient" means any person who has been committed by a court of competent jurisdiction to a state hospital, except a person committed to a state hospital pursuant to ORS 136.150 (1969 Replacement Part), 136.160 (1969 Replacement Part), 161.341 or 161.370.

[(6)] (7) "Resident of this state" means a person who has lived in this state continuously for a period of one year and who has not acquired legal residence in any other state by living continuously therein for at least one year subsequent to the residence of the person in this state. However, a service man or woman on active duty in the Armed Forces of the United States who was domiciled in Oregon upon entry into active duty and who has acquired no other domicile shall be entitled to have his or her children considered a resident of this state so long as no other domicile is acquired by the service man or woman.

[(7)] (8) "State hospital" means any institution listed in ORS 426.010 or 427.010.

SECTION 450. ORS 428.220 is amended to read:

428.220. (1) In determining whether or not any person committed by a court of competent jurisdiction to a state hospital or foreign hospital is a resident of this state:

(a) The time spent in a state hospital or foreign hospital or on parole therefrom shall not be counted in determining the residence of such person in this or any other state.

(b) The residence of such person at the time of commitment shall remain the residence of the person for the duration of the commitment of the person.

(2) The Department of Human Services may give written authorization for the admission to [*a state hospital whenever*] **the Eastern Oregon Training Center whenever:**

(a) The residence of any person cannot be established after reasonable and diligent investigation and effort.

(b) The peculiar circumstances of a case, in the judgment of the department, provide a sufficient reason for the suspension of the residence requirement provided by ORS 428.210 [(6)] (7).

(3) The Oregon Health Authority may give written authorization for the admission to the Blue Mountain Recovery Center or the Oregon State Hospital whenever:

(a) **The residence of any person cannot be established after reasonable and diligent investigation and effort.**

(b) **The peculiar circumstances of a case, in the judgment of the authority, provide a sufficient reason for the suspension of the residence requirement provided by ORS 428.210 (7).**

SECTION 451. ORS 428.230 is amended to read:

428.230. (1) Except as provided in ORS 428.205, 428.220 and 428.330, the Department of Human Services **and the Oregon Health Authority** shall return nonresident patients to any other state in which they may have legal residence.

(2) The department may give written authorization for the return to [*a state hospital*] **the Eastern Oregon Training Center** of a resident of Oregon who has been committed by a court of competent jurisdiction to a foreign hospital.

(3) The superintendent of [*any state hospital*] **the Eastern Oregon Training Center** shall admit and care for any person eligible for admission pursuant to subsection (2) of this section or ORS 428.220 (2) upon receipt of a certified copy of the commitment papers and the written authorization of the department.

(4) **The authority may give written authorization for the return to the Blue Mountain Recovery Center or the Oregon State Hospital of a resident of Oregon who has been committed by a court of competent jurisdiction to a foreign hospital.**

(5) **The superintendent of the Blue Mountain Recovery Center or the Oregon State Hospital shall admit and care for any person eligible for admission pursuant to subsection (4) of this section or ORS 428.220 (3) upon receipt of a certified copy of the commitment papers and the written authorization of the authority.**

SECTION 452. ORS 428.240 is amended to read:

428.240. (1) For the purpose of facilitating the return of nonresident patients, the Department of Human Services may enter into a reciprocal agreement with any other state for the mutual exchange of persons committed by a court of competent jurisdiction to [*any state hospital or*] **the Eastern Oregon Training Center or a foreign hospital**, whose legal residence is in the other's jurisdiction.

(2) For the purpose of facilitating the return of nonresident patients, the Oregon Health Authority may enter into a reciprocal agreement with any other state for the mutual exchange of persons committed by a court of competent jurisdiction to the Blue Mountain Recovery Center, the Oregon State Hospital or a foreign hospital, whose legal residence is in the other's jurisdiction.

[(2)] **(3)** In such agreements, the department **or authority** may:

(a) Only for purposes of mutual exchange with the other state, vary the period of residence required by ORS 428.210 [(6)] **(7)**.

(b) Provide for the arbitration of disputes arising out of the mutual exchange of such persons between this state and any other state.

SECTION 453. ORS 428.260 is amended to read:

428.260. (1) For the purpose of carrying out the provisions of ORS 428.210 to 428.270, the Department of Human Services **or the Oregon Health Authority** may employ all help necessary in arranging for and transporting nonresident patients.

(2) The cost and expense of providing such assistance and all expenses incurred in effecting the transportation of such patients shall be paid from funds appropriated for that purpose upon vouchers approved by the [*department and the superintendent of the state hospital from which such patients are transported*] **department, the authority or the superintendent of the Eastern Oregon Training Center, the Blue Mountain Recovery Center or the Oregon State Hospital.**

SECTION 454. ORS 428.270 is amended to read:

428.270. (1) Any person, except an officer, agent or employee of a common carrier acting in the line of duty, who brings or in any way aids in bringing into this state any patient without the written authorization of the Department of Human Services **or the Oregon Health Authority**, shall be liable to this state for all expenses incurred in the care of such patient and in the transportation of such patient to the other state where the patient legally resides.

(2) Hospitals and sanitariums, other than state hospitals, that care for and treat persons with mental illness or mental retardation shall be responsible for the return of those persons to their places of residence or domicile outside the state if they are brought into this state for treatment and care and are discharged from such institutions without being fully recovered.

(3) Failure to comply with the provisions of subsection (2) of this section shall render the person operating the hospital or sanitarium liable to reimburse the state for all expenses incurred in the care, maintenance and return of the persons with mental illness or mental retardation to their places of residence or domicile outside the state.

SECTION 455. ORS 428.310 is amended to read:

428.310. The Department of Human Services **or the Oregon Health Authority** may execute and terminate a compact on behalf of the State of Oregon with any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico joining therein, in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but

that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, the person shall be eligible for care and treatment in an institution in that state irrespective of the residence, settlement or citizenship qualifications of the person.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that the patient would be taken if the patient were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the patient shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties and responsibilities of any patient's guardian on the guardian's own behalf or in respect of any patient for whom the guardian may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian,

any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue the power and responsibility of the guardian, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with responsibility for the property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of the state of the compact administrator, shall act as general coordinator of activities under the compact in the state of the compact administrator and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by the state of the compact administrator either in the capacity of sending or receiving state. The compact administrator or the duly designated representative of the compact administrator shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when entered into according to law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom as provided by law and such renunciation shall be by the same authority which executed it. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SECTION 456. ORS 428.320 is amended to read:

428.320. (1) **[The] When the person who is the subject of the compact is being transported to or from the Eastern Oregon Training Center, the Department of Human Services shall carry out the duties of compact administrator, may promulgate rules and regulations to carry out more effectively the terms of the compact, and may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. The power of termination of the compact formerly vested in the Board of Control under ORS 428.310 is vested in the department.**

(2) When the person who is the subject of the compact is being transported to or from the Blue Mountain Recovery Center or the Oregon State Hospital, the Oregon Health Authority shall carry out the duties of compact administrator, may promulgate rules and regulations to carry out more effectively the terms of the compact, and may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. The power of termination of the compact formerly vested in the Board of Control under ORS 428.310 is vested in the authority.

SECTION 457. ORS 428.330 is amended to read:

428.330. (1) The Department of Human Services **or the Oregon Health Authority** may comply with the terms of the Interstate Compact on Mental Health in dealing with a state which is not a party of the interstate compact.

(2) When the department **or the authority** acts under subsection (1) of this section, the term "party state," as used in the Interstate Compact on Mental Health, includes states which are not parties of the interstate compact.

SECTION 458. ORS 430.010 is amended to read:

430.010. As used in ORS 430.010 to 430.050, 430.140 to 430.170, 430.265, 430.270 and 430.610 to 430.695:

(1) "Authority" means the Oregon Health Authority.

[(1)] (2) "Department" means the Department of Human Services.

[(2)] (3) "Health facility" means a facility licensed as required by ORS 441.015 or a facility accredited by the Joint Commission on Accreditation of Hospitals, either of which provides full-day or part-day acute treatment for alcoholism, drug addiction or mental or emotional disturbance, and is licensed to admit persons requiring 24-hour nursing care.

[(3)] (4) "Residential facility" or "day or partial hospitalization program" means a program or facility providing an organized full-day or part-day program of treatment. Such a program or facility shall be licensed, approved, established, maintained, contracted with or operated by the [department] authority under:

(a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(c) ORS 430.610 to 430.880 for mental or emotional disturbances.

[4] (5) "Outpatient service" means:

(a) A program or service providing treatment by appointment and by medical or osteopathic physicians licensed by the Oregon Medical Board under ORS 677.010 to 677.450; psychologists licensed by the State Board of Psychologist Examiners under ORS 675.010 to 675.150; nurse practitioners registered by the Oregon State Board of Nursing under ORS 678.010 to 678.410; or clinical social workers licensed by the State Board of Clinical Social Workers under ORS 675.510 to 675.600; or

(b) A program or service providing treatment by appointment that is licensed, approved, established, maintained, contracted with or operated by the [department] authority under:

(A) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(B) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(C) ORS 430.610 to 430.880 for mental or emotional disturbances.

SECTION 459. ORS 430.021 is amended to read:

430.021. Subject to ORS 417.300 and 417.305:

(1) The Department of Human Services shall:

(a) Direct, promote, correlate and coordinate all the activities, duties and direct services for persons with [mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence] **mental retardation or developmental disabilities**]; and].

(b) Promote, correlate and coordinate the [mental health and] developmental disabilities activities of all governmental organizations throughout the state in which there is any direct contact with [mental health and] developmental disabilities programs.

(c) Establish, coordinate, assist and direct a community developmental disabilities program in cooperation with local government units and integrate such a program with the state developmental disabilities program.

(d) Promote public education in this state concerning developmental disabilities and act as the liaison center for work with all interested public and private groups and agencies in the field of developmental disabilities services.

(2) The Oregon Health Authority shall:

(a) Direct, promote, correlate and coordinate all the activities, duties and direct services for persons with mental or emotional disturbances, alcoholism or drug dependence.

(b) Promote, correlate and coordinate the mental health activities of all governmental organizations throughout the state in which there is any direct contact with mental health programs.

(c) Establish, coordinate, assist and direct a community mental health program in cooperation with local government units and integrate such a program with the state mental health program.

(d) Promote public education in this state concerning mental health and act as the liaison center for work with all interested public and private groups and agencies in the field of mental health services.

[2] (3) The department **and the authority** shall develop cooperative programs with interested private groups throughout the state to effect better community awareness and action in the [field] **fields** of mental health and developmental disabilities, and encourage and assist in all necessary ways community general hospitals to establish psychiatric services.

[3] (4) To the greatest extent possible, the least costly settings for treatment, outpatient services and residential facilities shall be widely available and utilized except when contraindicated because of individual health care needs. State agencies that purchase treatment for mental or emotional disturbances shall develop criteria consistent with this policy. In reviewing applications for certificates of need, the Director of [Human Services] **the Oregon Health Authority** shall take this policy into account.

[4] *The department shall establish, coordinate, assist and direct a community mental health and developmental disabilities program in cooperation with local government units and integrate such a program with the total state mental and developmental disabilities health program.]*

[5] *The department shall promote public education in the state concerning mental health and developmental disabilities and act as the liaison center for work with all interested public and private groups and agencies in the field of mental health and developmental disabilities services.*

[6] (5) The department **and the authority** shall accept the custody of persons committed to its care by the courts of this state.

[7] (6) The [department] **authority** shall adopt rules to require a facility and a nonhospital facility as those terms are defined in ORS 426.005, and a provider that employs a person described in ORS 426.415, if subject to [department] **authority** rules regarding the use of restraint or seclusion during the course of mental health treatment of a child or adult, to report to the [department] **authority** each calendar quarter the number of incidents involving the use of restraint or seclusion. The aggregate data shall be made available to the public.

SECTION 460. ORS 430.030 is amended to read:

430.030. The enumeration of duties, functions and powers under ORS 430.021 shall not be deemed exclusive nor construed as a limitation on the powers and authority vested in the Department of Human Services **or the Oregon Health Authority** by other provisions of law.

SECTION 461. ORS 430.050 is amended to read:

430.050. (1) The Director of [Human Services] **the Oregon Health Authority**, with the approval of the Governor, shall appoint at least 15 but not more than 20 members of a Mental Health Advisory Board, composed of both lay and professionally trained individuals, qualified by training or experience to study the problems of mental health and make recommendations for the development of policies and procedures with respect to the state mental health programs. The membership shall provide balanced representation of program areas and shall include persons who represent the interests of children. At least four members of the board shall be persons with disabilities who shall serve as the Disability Issues Advisory Committee which is hereby established. The members of the board shall serve for terms of four years and are entitled to compensation and expenses as provided in ORS 292.495. The director may remove any member of the board for misconduct, incapacity or neglect of duty.

(2) The [Department of Human Services] **Oregon Health Authority** shall adopt rules specifying the duties of the board. In addition to those duties assigned by rule, the board shall assist the [department] **authority** in planning and preparation of administrative rules for the assumption of responsibility for psychiatric care in state and community hospitals by community mental health [and developmental disabilities] programs, in accordance with ORS 430.630 (3)(e).

(3) The board shall meet at least once each quarter.

(4) The director may make provision for technical and clerical assistance to the Mental Health Advisory Board and for the expenses of such assistance.

(5) The Disability Issues Advisory Committee shall meet at least once annually to make recommendations to the Mental Health Advisory Board.

(6) As used in this section, "person with a disability" means any person who:

(a) Has a physical or mental impairment which substantially limits one or more major life activities;

(b) Has a record of such an impairment; or

(c) Is regarded as having such an impairment.

SECTION 462. ORS 430.071 is amended to read:

430.071. The [Department of Human Services] **Oregon Health Authority** shall adopt a policy that supports and promotes self-determination for persons receiving mental health services. The policy shall be designed to remove barriers that:

(1) Segregate persons with disabilities from full participation in the community in the most integrated setting in accordance with the United States Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999); and

(2) Prevent persons with disabilities from enjoying a meaningful life, the benefits of community involvement and citizen rights guaranteed by law.

SECTION 463. ORS 430.073 is amended to read:

430.073. (1) As used in this section and ORS 430.075, “consumer” means a person who has received or is receiving mental health or addiction services.

(2) The Director of [*Human Services*] **the Oregon Health Authority** shall establish a Consumer Advisory Council to advise the director on the provision of mental health services by the [*Department of Human Services*] **Oregon Health Authority**. The council may review, evaluate and provide feedback on all site reviews related to mental health services provided by the [*department*] **authority**.

(3) The director shall appoint 15 to 25 consumers to the council. In making appointments, the director shall strive to balance the representation according to geographic areas of the state and age.

(4) The [*department*] **authority** shall provide administrative support to the council.

(5) Members of the council are not entitled to compensation or reimbursement of expenses under ORS 292.495.

SECTION 464. ORS 430.078 is amended to read:

430.078. The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules to implement ORS 430.071 to 430.075.

SECTION 465. ORS 430.140 is amended to read:

430.140. (1) The [*Department of Human Services*] **Oregon Health Authority** is designated as the state agency to apply to and receive from the federal government or any agency thereof such grants for promoting mental health, including grants for mental hygiene programs, as may be available to this state or any of its political subdivisions or agencies.

(2) For the purposes of subsection (1) of this section, the [*department is designated the Mental Health Authority for the State of Oregon and*] **authority** shall:

(a) Disburse or supervise the disbursement of all funds made available at any time by the federal government or this state for those purposes, except the funds made available by the state for the care of dependent or delinquent children in public or private institutions.

(b) Adopt, carry out and administer plans for those purposes. Plans so adopted shall be made statewide in application insofar as reasonably feasible, possible or permissible, and shall be so devised as to meet the approval of the federal government or any of its agencies, not inconsistent with the laws of the state.

SECTION 466. ORS 430.160 is amended to read:

430.160. All funds [*applied for and received by the Department of Human Services and*] allotted to the state by the Surgeon General, the Treasury Department, or other agency of the United States for the construction and operation of community facilities in carrying out the state plan for the promotion of mental health [*and retardation*] **or developmental disability** services, shall be deposited with the State Treasurer and shall be credited to a special account in the State Treasury, separate from the General Fund, to be used as a depository for such federal funds. Such funds hereby are continuously appropriated and shall be expended solely for the purpose of construction and operation of community facilities and in accordance with the plan upon which the allotment to the state was based.

SECTION 467. ORS 430.165 is amended to read:

430.165. The [*Department of Human Services*] **Oregon Health Authority** may prescribe fee schedules for any of the programs that it establishes and operates under ORS 430.265, 430.306 to 430.375, 430.405, 430.415, 430.850 to 430.880, 813.500 and 813.510. The fees shall be charged and collected by the [*department*] **authority** in the same manner as charges are collected under ORS 179.610 to 179.770. When the [*department*] **authority** acts under this section, “person in a state institution” or “person at a state institution” or any similar phrase, as defined in ORS 179.610, includes a person who receives services from a program for which fee schedules are established under this section.

SECTION 468. ORS 430.170 is amended to read:

430.170. (1) On request of the Department of Human Services, the Oregon Department of Administrative Services shall draw on amounts appropriated to the Department of Human Services for

operating expenses for use by the Department of Human Services as a revolving fund. **Claims for reimbursement of amounts paid from the revolving fund shall be submitted to the Department of Human Services and the Oregon Department of Administrative Services for approval. When such claims have been approved by the Department of Human Services and the Oregon Department of Administrative Services, a payment covering them shall be drawn in favor of the Department of Human Services and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund.**

(2) On request of the Oregon Health Authority, the Oregon Department of Administrative Services shall draw on amounts appropriated to the authority for operating expenses for use by the authority as a revolving fund. Claims for reimbursement of amounts paid from the revolving fund shall be submitted to the authority and the Oregon Department of Administrative Services for approval. When such claims have been approved by the authority and the Oregon Department of Administrative Services, a payment covering them shall be drawn in favor of the authority and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund.

(3) *[The revolving fund]* A revolving fund established under subsection (1) or (2) of this section shall not exceed the aggregate sum of \$25,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the Department of Human Services or the Oregon Health Authority may draw checks. The Department of Human Services or the authority may establish petty cash funds within the revolving fund by drawing checks upon the revolving fund payable to the custodians of the petty cash funds.

~~[(2)]~~ (4) *[The revolving fund]* A revolving fund established under subsections (1) or (2) of this section may be used by the Department of Human Services or the authority to pay incidental expenses for which the Department of Human Services or the authority has appropriated funds.

~~[(3)]~~ *Claims for reimbursement of amounts paid from the revolving fund shall be submitted to the Department of Human Services and the Oregon Department of Administrative Services for approval. When such claims have been approved by the Department of Human Services and the Oregon Department of Administrative Services, a payment covering them shall be drawn in favor of the Department of Human Services and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund.*

SECTION 469. ORS 430.195 is amended to read:

430.195. (1) The Department of Human Services may receive funds that are the property of the department's clients or are contributed for the use of the department's clients. The department shall deposit such funds in trust accounts established under ORS 293.445. Interest earned by a trust account shall be credited to the account.

(2) The Oregon Health Authority may receive funds that are the property of the authority's clients or are contributed for the use of the authority's clients. The authority shall deposit such funds in trust accounts established under ORS 293.445. Interest earned by a trust account shall be credited to the account.

~~[(2)]~~ (3) Disbursements from a trust account shall be made for purposes for which the contributions or payments were made to the department or the authority. When such purposes include the care or maintenance of a client, the department *[may reimburse itself]* or the authority may draw reimbursements from the account to pay for care and services provided to the client.

~~[(3)]~~ (4) The department or the authority may by interagency agreement authorize another state agency to exercise the authority granted under this section. Any system of accounts used for purposes of this subsection shall provide detailed accountability for each receipt and disbursement of funds for each client. The department and the authority shall remain accountable for the proper handling of the trust accounts authorized by this section.

SECTION 470. ORS 430.205 is amended to read:

430.205. As used in this section and ORS 430.210:

(1) "Facility" means any of the following [*which*] **that** are licensed or certified by the Department of Human Services **or the Oregon Health Authority** or [*which*] **that** contract with [*that department or a program*] **the department or authority** for the provision of services:

- (a) A health care facility as defined in ORS 442.015;
- (b) A domiciliary care facility as defined in ORS 443.205;
- (c) A residential facility as defined in ORS 443.400; or
- (d) An adult foster home as defined in ORS 443.705.

(2) "Person" means an individual who has a mental illness or developmental disability and receives services from a program or facility.

(3) "Program" means a community mental health [*and*] **program or a community** developmental disabilities program as described in ORS 430.610 to 430.695 and agencies with which [*it*] **the program** contracts to provide services.

(4) "Services" means mental health [*and*] **services or** developmental disabilities services provided under ORS 430.630.

SECTION 471. ORS 430.210 is amended to read:

430.210. (1) While receiving services, every person shall have the right to:

(a) Choose from available services those which are appropriate, consistent with the plan developed in accordance with paragraphs (b) and (c) of this subsection and provided in a setting and under conditions that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence.

(b) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs.

(c) Ongoing participation in planning of services in a manner appropriate to the person's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (b) of this subsection, and the right to be provided with a reasonable explanation of all service considerations.

(d) Not receive services without informed voluntary written consent except in a medical emergency or as otherwise permitted by law.

(e) Not participate in experimentation without informed voluntary written consent.

(f) Receive medication only for the person's individual clinical needs.

(g) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure.

(h) A humane service environment that affords reasonable protection from harm, reasonable privacy and daily access to fresh air and the outdoors, except that such access may be limited when it would create significant risk of harm to the person or others.

(i) Be free from abuse or neglect and to report any incident of abuse without being subject to retaliation.

(j) Religious freedom.

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation.

(L) Visit with family members, friends, advocates and legal and medical professionals.

(m) Exercise all rights set forth in ORS [*426.385 and*] 427.031 if the individual is committed to the Department of Human Services.

(n) Exercise all rights set forth in ORS 426.385 if the individual is committed to the Oregon Health Authority.

[*n*] (o) Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedures for reporting abuse, and to have these rights and procedures, including the name, address and telephone number of the system described in ORS 192.517 (1), prominently posted in a location readily accessible to the person and made available to the person's guardian and any representative designated by the person.

[(o)] (p) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure.

[(p)] (q) Have access to and communicate privately with any public or private rights protection program or rights advocate.

[(q)] (r) Exercise all rights described in this section without any form of reprisal or punishment.

(2) An individual who is receiving developmental disability services under ORS 430.630 has the right to be informed and have the individual's guardian and any representative designated by the individual be informed that a family member has contacted the [department] **Department of Human Services** to determine the location of the individual, and to be informed of the name and contact information, if known, of the family member.

(3) The rights described in this section are in addition to, and do not limit, all other statutory and constitutional rights which are afforded all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose of property, enter into contracts and execute documents.

(4) The rights described in this section may be asserted and exercised by the person, the person's guardian and any representative designated by the person.

(5) Nothing in this section may be construed to alter any legal rights and responsibilities between parent and child.

SECTION 472. ORS 430.215 is amended to read:

430.215. (1) The Department of Human Services shall be responsible for[:]

[(1)] planning, policy development, administration and delivery of services to children with developmental disabilities and their families. Services to children with developmental disabilities may include, but are not limited to, case management, family support, crisis and diversion services, intensive in-home services, and residential and foster care services.[: and]

(2) **The Oregon Health Authority shall be responsible for** psychiatric residential and day treatment services for children with mental or emotional disturbances.

SECTION 473. ORS 430.240 is amended to read:

430.240. The [Department of Human Services] **Oregon Health Authority** in developing treatment programs for drug-dependent persons shall develop programs that assist drug-dependent persons to become persons who are able to live healthy and productive lives without the use of any natural or synthetic opiates.

SECTION 474. ORS 430.255 is amended to read:

430.255. (1)(a) There is created in the office of the Governor the Governor's Council on Alcohol and Drug Abuse Programs. The council shall consist of not more than 11 members who are appointed by the Governor for terms of four years. Members are eligible for one reappointment. Members must be without conflicting interests and as representative as possible of:

(A) Geographic regions of the state;

(B) At-risk populations, including among others, youth, the elderly, minorities and women;

(C) Knowledgeable professionals, such as pharmacists, physicians, attorneys and the like who are not necessarily representatives of professional organizations, but who may be recovering;

(D) Knowledgeable nonprofessionals who may represent advocate groups and who may be recovering; and

(E) Local advisory groups.

(b) In addition to the members appointed to the council under paragraph (a) of this subsection, the council shall include:

(A) One member appointed by the President of the Senate, who shall be a member of the Senate and who shall be a nonvoting, advisory member; and

(B) One member appointed by the Speaker of the House of Representatives, who shall be a member of the House of Representatives and who shall be a nonvoting, advisory member.

(2) The duties of the Governor's Council on Alcohol and Drug Abuse Programs are to:

(a) Assess the economic and social impact of alcohol and drug abuse on the State of Oregon and report the findings and recommendations to the Governor by January 1 of each even-numbered year.

(b) Review and make recommendations to the Governor on the goals, financing, priorities and a state plan for prevention, intervention and treatment of alcohol and drug abuse problems, which encompasses all appropriate state agencies and is consistent with ORS 430.258, by January 1 of each even-numbered year.

(c) Review alcohol and drug abuse programs and make recommendations to the Governor on the effectiveness and priorities for improvements of all such prevention and treatment programs for alcohol and drug problems engaged in or financed through state agencies by January 1 of each even-numbered year.

(d) Review and approve the components of the local coordinated comprehensive plan created pursuant to ORS 417.775 that address alcohol and other drug prevention and treatment plans developed under ORS 430.258.

(e) Work to ensure broad-based citizen involvement in the planning and execution of the alcohol and drug prevention and treatment plans at both the state and local level.

(3) Members of the council are entitled to compensation and expenses as provided under ORS 292.495.

(4) The Governor may remove any member for misconduct, incapacity or neglect of duty.

(5) The Director of [*Human Services*] **the Oregon Health Authority** shall provide the technical and financial support as is required and authorized by the Legislative Assembly and as is necessary to carry out this section and ORS [*409.010,*] 430.250, 430.257, 430.258, 430.259, 430.270, 430.290, 430.359, 430.368, 430.535 and 430.630.

SECTION 475. ORS 430.257 is amended to read:

430.257. (1) The Legislative Assembly finds that alcohol and other drug use, abuse and addiction:

(a) Pose significant social and public health problems for Oregon;

(b) Impact the budgets and workloads of state and local agencies that provide services for children and families and contribute to incidences of crime, violence, accidents and deaths, as well as reducing worker productivity; and

(c) Contribute substantially to the problems faced by a significant number of persons served by the Department of Human Services, Department of Corrections, **Oregon Health Authority**, Oregon Youth Authority, Juvenile Crime Prevention Advisory Committee and State Commission on Children and Families.

(2) The Department of Human Services, Department of Corrections, **Oregon Health Authority**, Oregon Youth Authority, Juvenile Crime Prevention Advisory Committee and State Commission on Children and Families shall contribute to the development of a comprehensive state plan for alcohol and other drug prevention, intervention and treatment services.

(3) The administrative heads of the Department of Education, Department of Human Services, **Oregon Health Authority**, Oregon State Police, Department of Transportation, Oregon Liquor Control Commission, Juvenile Crime Prevention Advisory Committee and State Commission on Children and Families shall each designate an individual, or in the instance of multidivisional departments, individuals, to serve as liaison to and assist the Governor's Council on Alcohol and Drug Abuse Programs in meeting the policies, duties and responsibilities set forth in this section and ORS [*409.010,*] 430.250, 430.255, 430.258, 430.259, 430.270, 430.290, 430.359, 430.368, 430.535 and 430.630.

SECTION 476. ORS 430.259 is amended to read:

430.259. All state agencies providing alcohol and other drug prevention and treatment services and strategies, or purchasing prevention and treatment services and strategies from local community providers approved or licensed by the [*Department of Human Services*] **Oregon Health Authority**, shall coordinate with the office to report expenditures and client data for the purposes of service capacity utilization and monitoring resources and outcomes coordination in the statewide plan of services and strategies for alcohol and other drug prevention and treatment for children and families prepared under ORS 430.258.

SECTION 477. ORS 430.265 is amended to read:

430.265. The [Department of Human Services] **Oregon Health Authority** is authorized to contract with the federal government for services to alcohol and drug-dependent persons who are either residents or nonresidents of the State of Oregon.

SECTION 478. ORS 430.270 is amended to read:

430.270. The [Department of Human Services] **Oregon Health Authority**, in consultation with the Governor's Council on Alcohol and Drug Abuse Programs, shall take such means as it considers most effective to bring to the attention of the general public, employers, the professional community and particularly the youth of the state, the harmful effects to the individual and society of the irresponsible use of alcoholic beverages, controlled substances and other chemicals, and substances with abuse potential.

SECTION 479. ORS 430.290 is amended to read:

430.290. (1) The objective of this section is to prevent alcoholism and drug dependency.

(2) To carry out the objective of this section, the [Department of Human Services] **Oregon Health Authority** shall:

(a) Consult with and be advised by the Governor's Council on Alcohol and Drug Abuse Programs and the Mental Health Advisory Board in identifying program priorities for the primary prevention of alcoholism and drug dependency.

(b) Solicit program proposals that address identified priorities from agencies, associations, individuals or any political subdivision of this state and award and distribute moneys under this section in accordance with the provisions of this section.

(3) Every applicant for a grant to develop a primary prevention of alcoholism program shall be assisted in its preparation by the local alcohol planning committee, if there be one, operating in the area to which the application relates. Every applicant shall establish to the satisfaction of the [department] **authority** that the committee was actively involved in the development and preparation of such program.

(4) Every grant applicant shall include the recommendations of the local alcohol planning committee, if there be one, operating in the area. The [department] **authority** shall take the recommendations of the local alcohol planning committee into consideration before making or refusing a grant.

SECTION 480. ORS 430.306 is amended to read:

430.306. As used in ORS 430.315 to 430.335, 430.397 and 430.399, unless the context requires otherwise:

(1) "Alcoholic" means any person who has lost the ability to control the use of alcoholic beverages, or who uses alcoholic beverages to the extent that the health of the person or that of others is substantially impaired or endangered or the social or economic function of the person is substantially disrupted. An alcoholic may be physically dependent, a condition in which the body requires a continuing supply of alcohol to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition characterized by an overwhelming mental desire for continued use of alcoholic beverages.

(2) "Applicant" means a city, county or any combination thereof.

(3) ["Department" means the Department of Human Services.] "**Authority**" means the **Oregon Health Authority**.

(4) "Detoxification center" means a publicly or privately operated profit or nonprofit facility approved by the [department] **authority** that provides emergency care or treatment for alcoholics or drug-dependent persons.

(5) "Director of the treatment facility" means the person in charge of treatment and rehabilitation programs at a treatment facility.

(6) "Drug-dependent person" means one who has lost the ability to control the personal use of controlled substances or other substances with abuse potential, or who uses such substances or controlled substances to the extent that the health of the person or that of others is substantially impaired or endangered or the social or economic function of the person is substantially disrupted. A drug-dependent person may be physically dependent, a condition in which the body requires a

continuing supply of a drug or controlled substance to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition characterized by an overwhelming mental desire for continued use of a drug or controlled substance.

(7) "Halfway house" means a publicly or privately operated profit or nonprofit, residential facility approved by the [department] **authority** that provides rehabilitative care and treatment for alcoholics or drug-dependent persons.

(8) "Local alcoholism planning committee" means a committee appointed or designated by the county governing body under ORS 430.342.

(9) "Other treatment facility" includes outpatient facilities, inpatient facilities and such other facilities as the [department] **authority** determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for alcoholics or drug-dependent persons and which operate in the form of a general hospital, a state hospital, a foster home, a hostel, a clinic or other suitable form approved by the [department] **authority**.

SECTION 481. ORS 430.315 is amended to read:

430.315. The Legislative Assembly finds alcoholism or drug dependence is an illness. The alcoholic or drug-dependent person is ill and should be afforded treatment for that illness. To the greatest extent possible, the least costly settings for treatment, outpatient services and residential facilities shall be widely available and utilized except when contraindicated because of individual health care needs. State agencies that purchase treatment for alcoholism or drug dependence shall develop criteria consistent with this policy in consultation with the [Department of Human Services] **Oregon Health Authority**. In reviewing applications for certificate of need, the Director of [Human Services] **the Oregon Health Authority** shall take this policy into account.

SECTION 482. ORS 430.335 is amended to read:

430.335. Subject to the availability of funds therefor, the [Department of Human Services] **Oregon Health Authority** may:

(1) Provide directly through publicly operated treatment facilities, which shall not be considered to be state institutions, or by contract with publicly or privately operated profit or nonprofit treatment facilities, for the care of alcoholics or drug-dependent persons.

(2) Sponsor and encourage research of alcoholism and drug dependence.

(3) Seek to coordinate public and private programs relating to alcoholism and drug dependence.

(4) Apply for federally granted funds available for study or prevention and treatment of alcoholism and drug dependence.

(5) Directly or by contract with public or private entities, administer financial assistance, loan and other programs to assist the development of drug and alcohol free housing.

SECTION 483. ORS 430.342 is amended to read:

430.342. (1) The governing body of each county or combination of counties in a mental health administrative area, as designated by the [Department of Human Services] **Oregon Health Authority**, shall appoint a local alcoholism planning committee or shall designate an already existing body to act as the local alcoholism planning committee.

(2) The committee shall identify needs and establish priorities for alcoholism services. In doing so, it shall coordinate its activities with existing community mental health planning bodies.

(3) Members of the committee shall be representative of the geographic area and shall be persons with interest or experience in developing programs dealing with alcohol problems. The membership of the committee shall include a number of minority members which reasonably reflects the proportion of the need for alcoholism treatment and rehabilitation services of minorities in the community.

SECTION 484. ORS 430.345 is amended to read:

430.345. Upon application therefor, the [Department of Human Services] **Oregon Health Authority** may make grants from funds specifically appropriated for the purposes of carrying out ORS 430.345 to 430.380 to any applicant for the establishment, operation and maintenance of alcohol and drug abuse prevention, early intervention and treatment services. When necessary, a portion of the appropriated funds may be designated by the [department] **authority** for training and technical as-

sistance, or additional funds may be appropriated for this purpose. Alcohol and drug abuse prevention, early intervention and treatment services shall be approved if the applicant establishes to the satisfaction of the [department] **authority**:

(1) The adequacy of the services to accomplish the goals of the applicant and the program goals are consonant with the purposes of ORS 430.306, 430.338 to 430.380, 471.810, 473.030 and 473.050 and goals of the State Plan for Alcohol Problems.

(2) The community need for the services as documented in the annual community mental health plan.

(3) That an appropriate operating relationship exists, or will exist with other community facilities able to assist in providing alcohol and drug abuse prevention, early intervention and treatment services, including nearby detoxification centers and halfway houses.

(4) That the services comply with the rules adopted by the [department] **authority** pursuant to ORS 430.357.

SECTION 485. ORS 430.350 is amended to read:

430.350. (1) Every applicant for a grant made under ORS 430.345 to 430.380 shall be assisted in the preparation and development of alcohol and drug abuse prevention, early intervention and treatment services by the local planning committee operating in the area to which the application relates. Every application shall establish to the satisfaction of the [Department of Human Services] **Oregon Health Authority** that the committee was actively involved in the development and preparation of such program.

(2) The [department] **authority** shall require of every applicant for a grant made under ORS 430.345 to 430.380 the recommendation of the local planning committee in the area to which the application relates. The [department] **authority** shall take such recommendation into consideration before making or refusing grants under ORS 430.345 to 430.380.

SECTION 486. ORS 430.357 is amended to read:

430.357. (1) The [Department of Human Services] **Oregon Health Authority** shall make all necessary and proper rules governing the administration of ORS 430.345 to 430.380, including but not limited to standards, consistent with modern knowledge about alcohol and drug abuse prevention, early intervention and treatment services.

(2) All standards and guidelines adopted by the [Department of Human Services] **authority** to implement programs authorized under ORS 430.345 to 430.380 shall be adopted as rules pursuant to ORS chapter 183 regardless of whether they come within the definition of rule in ORS 183.310 (8).

SECTION 487. ORS 430.359 is amended to read:

430.359. (1) Upon approval of an application, the [Department of Human Services] **Oregon Health Authority** shall enter into a matching fund relationship with the applicant. In all cases the amount granted by the [department] **authority** under the matching formula shall not exceed 50 percent of the total estimated costs, as approved by the [department] **authority**, of the alcohol and drug abuse prevention, early intervention and treatment services.

(2) The amount of state funds shall be apportioned among the applicants according to the community need of the applicant for services as compared with the community needs of all applicants. In evaluating the community needs of the applicant, the [department] **authority**, in consultation with the Governor's Council on Alcohol and Drug Abuse Programs, shall give priority consideration to those applications that identify and include alcohol and drug abuse prevention, early intervention and treatment services aimed at providing services to minorities with a significant population of affected persons. The funds granted shall be distributed monthly.

(3) Federal funds at the disposal of an applicant for use in providing alcohol and drug abuse prevention, early intervention and treatment services may be counted toward the percentage contribution of an applicant.

(4) An applicant that is, at the time of a grant made under this section, expending funds appropriated by its governing body for the alcohol and drug abuse prevention, early intervention and treatment services shall, as a condition to the receipt of funds under this section, maintain its financial contribution to these programs at an amount not less than the preceding year. However, the

financial contribution requirement may be waived in its entirety or in part in any year by the [*Department of Human Services*] **authority** because of:

(a) The severe financial hardship that would be imposed to maintain the contribution in full or in part;

(b) The application of any special funds for the alcohol and drug abuse prevention, early intervention and treatment services in the prior year when such funds are not available in the current year;

(c) The application of federal funds, including but not limited to general revenue sharing, distributions from the Oregon and California land grant fund and block grant funds to the alcohol and drug abuse prevention, early intervention and treatment services in the prior year when such funds are not available for such application in the current year; or

(d) The application of fund balances resulting from fees, donations or underexpenditures in a given year of the funds appropriated to counties pursuant to ORS 430.380 (2) to the alcohol and drug abuse prevention, early intervention and treatment services in the prior year when such funds are not available for such application in the current year.

(5) Any moneys received by an applicant from fees, contributions or other sources for alcohol and drug abuse prevention, early intervention and treatment services for service purposes, including federal funds, shall be considered a portion of an applicant's contribution for the purpose of determining the matching fund formula relationship. All moneys so received shall only be used for the purposes of carrying out ORS 430.345 to 430.380.

(6) Grants made pursuant to ORS 430.345 to 430.380 shall be paid from funds specifically appropriated therefor and shall be paid in the same manner as other claims against the state are paid.

SECTION 488. ORS 430.364 is amended to read:

430.364. Within the limits of available funds, in giving priority consideration under ORS 430.359 (2), the [*Department of Human Services*] **Oregon Health Authority** shall:

(1) Identify all applications containing funding proposals for minority programs and assess the extent to which such funding proposals address the needs of minorities as stated in ORS 430.362, adjusting such amounts as it deems justified on the basis of the facts presented for its consideration and such additional information as may be necessary to determine an appropriate level of funding for such programs, and award such funds to those applicants for the purposes stated in the application; and

(2) After making a determination of the appropriate level of funding minority programs under subsection (1) of this section, assess the remaining portions of all applications containing minority program funding proposals together with applications which do not contain funding proposals for minority programs on the basis of the remaining community need stated in ORS 430.345, adjusting such amounts as it deems justified on the basis of the facts presented for its consideration and such additional information as may be necessary to determine an appropriate level of funding such programs, and award such funds to those applicants.

SECTION 489. ORS 430.366 is amended to read:

430.366. (1) Every proposal for alcohol and drug abuse prevention, early intervention and treatment services received from an applicant shall contain:

(a) A clear statement of the goals and objectives of the program for the following fiscal year, including the number of persons to be served and methods of measuring the success of services rendered;

(b) A description of services to be funded; and

(c) A statement of the minorities to be served, if a minority program.

(2) Thirty days before the end of each fiscal year, every service funded under ORS 430.306, 430.338 to 430.380, 471.810, 473.030 and 473.050 shall file a concise progress report with the [*Department of Human Services*] **Oregon Health Authority**, including a narrative statement of progress made in meeting its goals and objectives for the year.

(3) The [*department*] **authority** shall assemble all progress reports received in each biennium and transmit them to the succeeding session of the Legislative Assembly.

SECTION 490. ORS 430.368 is amended to read:

430.368. (1) Any alcohol and drug abuse prevention, early intervention and treatment service, including but not limited to minority programs, aggrieved by any final action of an applicant with regard to requesting funding for the program from the [Department of Human Services] **Oregon Health Authority**, may appeal the applicant's action to the Director of [Human Services] **the Oregon Health Authority** within 30 days of the action. For the purposes of this section "final action" means the submission of the applicant's compiled funding requests to the [department] **authority**. The director shall review, in consultation with the Governor's Council on Alcohol and Drug Abuse Programs, all appealed actions for compliance with the purposes and requirements of ORS 430.306, 430.338 to 430.380, 471.810, 473.030 and 473.050, including but not limited to ORS 430.338 (5).

(2) The director shall act on all appeals within 60 days of filing, or before the time of the [department's] **authority's** decision on the applicant's funding request, whichever is less. The director is not required to follow procedures for hearing a contested case, but shall set forth written findings justifying the action. The decision of the director shall be final, and shall not be subject to judicial review.

SECTION 491. ORS 430.375 is amended to read:

430.375. The [Department of Human Services] **Oregon Health Authority** shall recommend fee schedules to be used in determining the dollar fee to charge a person admitted to approved alcohol and drug abuse prevention, early intervention and treatment services for the expenses incurred by the service in offering alcohol and drug abuse prevention, early intervention and treatment services. An individual facility may adopt the schedules developed by the [department] **authority** or may, subject to the approval of the [department] **authority**, develop and adopt its own fee schedules. The fee schedules adopted by each facility shall be applied uniformly to all persons admitted to the facility and shall be based on the costs of a person's alcohol and drug abuse prevention, early intervention and treatment services and the ability of the person to pay. The person admitted shall be liable to the facility only to the extent indicated by the fee schedules.

SECTION 492. ORS 430.380 is amended to read:

430.380. (1) There is established in the General Fund of the State Treasury an account to be known as the Mental Health Alcoholism and Drug Services Account. Moneys deposited in the account are continuously appropriated for the purposes of ORS 430.345 to 430.380. Moneys deposited in the account may be invested in the manner prescribed in ORS 293.701 to 293.820.

(2) Forty percent of the moneys in the Mental Health Alcoholism and Drug Services Account shall be continuously appropriated to the counties on the basis of population. The counties must use the moneys for the establishment, operation and maintenance of alcohol and drug abuse prevention, early intervention and treatment services and for local matching funds under ORS 430.345 to 430.380.

(3) Forty percent of the moneys shall be continuously appropriated to the [Department of Human Services] **Oregon Health Authority** to be used for state matching funds to counties for alcohol and drug abuse prevention, early intervention and treatment services pursuant to ORS 430.345 to 430.380.

(4) Twenty percent of the moneys shall be continuously appropriated to the [Department of Human Services] **Oregon Health Authority** to be used for alcohol and drug abuse prevention, early intervention and treatment services for inmates of correctional and penal institutions and for parolees therefrom and for probationers as provided pursuant to rules of the [department] **authority**. However, prior to expenditure of moneys under this subsection, the [department] **authority** must present its program plans for approval to the appropriate legislative body which is either the Joint Ways and Means Committee during a session of the Legislative Assembly or the Emergency Board during the interim between sessions.

SECTION 493. ORS 430.395 is amended to read:

430.395. (1) Subject to the availability of funds, the [Department of Human Services] **Oregon Health Authority** may fund regional centers for the treatment of adolescents with drug and alcohol dependencies.

(2) The [*Department of Human Services*] **authority** shall define by rule a minimum number of inpatient beds and outpatient slots necessary for effective treatment and economic operation of any regional center funded by state funds.

(3) The areas to be served by any treatment facility shall be determined by the following:

- (a) Areas that demonstrate the most need;
- (b) Areas with no treatment program or an inadequate program; and
- (c) Areas where there is strong, organized community support for youth treatment programs.

(4) The area need is determined by:

- (a) Current area youth admissions to treatment programs;
- (b) Per capita consumption of alcohol in the area;
- (c) Percentage of area population between 10 and 18 years of age;
- (d) Whether the area has effective, specialized outpatient and early intervention services in place;

(e) Whether the area suffers high unemployment and economic depression; and

(f) Other evidence of need.

(5) As used in this section, "regional center" means a community residential treatment facility including intensive residential and outpatient care for adolescents with drug and alcohol dependencies.

SECTION 494. ORS 430.397 is amended to read:

430.397. Any person may voluntarily apply for admission to any treatment facility, as defined in ORS 430.306, operated pursuant to rules of the [*Department of Human Services*] **Oregon Health Authority**. The director of the treatment facility shall determine whether the person shall be admitted as a patient, or referred to another appropriate treatment facility or denied referral or admission. If the person is under 18 years of age or an incompetent, the director of the treatment facility shall notify the person's parents or guardian of the admission or referral.

SECTION 495. ORS 430.420 is amended to read:

430.420. (1) In collaboration with local seizing agencies, the district attorney, the local public safety coordinating council and the local mental health advisory committee, a local alcoholism planning committee appointed or designated pursuant to ORS 430.342 shall develop a plan to integrate drug treatment services into the criminal justice system for offenders who commit nonviolent felony drug possession offenses. The plan may also include property offenders as provided for under ORS 475.245. The plan developed under this subsection must be incorporated into the local coordinated comprehensive plan required by ORS 417.775.

(2)(a) A plan may include, but need not be limited to, programs that occur before adjudication, after adjudication as part of a sentence of probation or as part of a conditional discharge.

(b) A plan must include, but need not be limited to:

(A) A description of local criminal justice and treatment coordination efforts;

(B) A description of the method by which local, state and federal treatment resources are prioritized and allocated to meet the needs of the drug abusing offender population;

(C) The principles that guide criminal justice strategies for supervision and treatment of drug abusing offenders and the purchase of treatment services from local community providers;

(D) The desired outcomes for criminal justice strategies for supervision and treatment of drug abusing offenders and the provision of treatment services and identification of a method for monitoring and reporting the outcomes; and

(E) Consistent standards for measuring the success of criminal justice strategies for supervision and treatment of drug abusing offenders and the provision of treatment.

(3) A program must include, but need not be limited to:

(a) Ongoing oversight of the participant;

(b) Frequent monitoring to determine whether a participant is using controlled substances unlawfully; and

(c) A coordinated strategy governing responses to a participant's compliance or noncompliance with the program.

(4) The local alcoholism planning committee shall submit the plan to the [*Department of Human Services*] **Oregon Health Authority** and shall provide the county board of commissioners with a copy of the plan.

SECTION 496. ORS 430.422 is amended to read:

430.422. The Drug Prevention and Education Fund is established separate and distinct from the General Fund. The Drug Prevention and Education Fund consists of moneys deposited in the fund under ORS 131.597 and 430.426, and other moneys as may be appropriated to the fund by law. The moneys in the Drug Prevention and Education Fund are continuously appropriated to the [*Department of Human Services*] **Oregon Health Authority** for the purpose of assisting counties in paying the costs incurred by the counties in providing drug treatment services pursuant to plans submitted under ORS 430.420.

SECTION 497. ORS 430.424 is amended to read:

430.424. The [*Department of Human Services*] **Oregon Health Authority** shall distribute moneys in the Drug Prevention and Education Fund established in ORS 430.422 based on a review of the plans submitted to the office under ORS 430.420. Funding criteria include, but need not be limited to, whether the plan includes the existence or development of a drug treatment court or a drug diversion program.

SECTION 498. ORS 430.426 is amended to read:

430.426. (1) The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules necessary to carry out the provisions of ORS 430.420 to 430.426.

(2) The [*department*] **authority** may accept gifts, grants and donations from any source, public or private. Moneys accepted under this section must be deposited in the Drug Prevention and Education Fund to be used for the purposes for which the fund is established.

SECTION 499. ORS 430.450 is amended to read:

430.450. As used in ORS 430.450 to 430.555, unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[(1)] (2) **“Community diversion plan”** means a system of services approved and monitored by the [*Department of Human Services*] **Oregon Health Authority** in accordance with approved county mental health plans, which may include but need not be limited to, medical, educational, vocational, social and psychological services, training, counseling, provision for residential care, and other rehabilitative services designed to benefit the defendant and protect the public.

[(2)] (3) **“Crimes of violence against the person”** means criminal homicide, assault and related offenses as defined in ORS 163.165 to 163.208, rape and sexual abuse, incest, or any other crime involving the use of a deadly weapon or which results in physical harm or death to a victim.

[(3)] *“Department” means the Department of Human Services.*

(4) **“Diversion”** means the referral or transfer from the criminal justice system into a program of treatment or rehabilitation of a defendant diagnosed as drug dependent and in need of treatment at [*department*] **authority** approved sites, on the condition that the defendant successfully fulfills the specified obligations of a program designed for rehabilitation.

(5) **“Diversion coordinator”** means a person designated by a county mental health program director to work with the criminal justice system and health care delivery system to screen defendants who may be suitable for diversion; to coordinate the formulation of individual diversion plans for such defendants; and to report to the court the performance of those defendants being treated under an individual diversion plan.

(6) **“Director of the treatment facility”** means the person in charge of treatment and rehabilitation programs at the treatment facility.

(7) **“Drug abuse”** means repetitive, excessive use of a drug or controlled substance short of dependence, without medical supervision, which may have a detrimental effect on the individual or society.

(8) **“Drug-dependent person”** means one who has lost the ability to control the personal use of controlled substances or other substances with abuse potential, or who uses such substances or controlled substances to the extent that the health of the person or that of others is substantially

impaired or endangered or the social or economic function of the person is substantially disrupted. A drug-dependent person may be physically dependent, a condition in which the body requires a continuing supply of a drug or controlled substance to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition characterized by an overwhelming mental desire for continued use of a drug or controlled substance.

(9) "Evaluation" means any diagnostic procedures used in the determination of drug dependency, and may include but are not limited to chemical testing, medical examinations and interviews.

(10) "Individual diversion plan" means a system of services tailored to the individual's unique needs as identified in the evaluation, which may include but need not be limited to medical, educational, vocational, social and psychological services, training, counseling, provision for residential care, and other rehabilitative services designed to benefit the defendant and protect the public. The plan shall include appropriate methods for monitoring the individual's progress toward achievement of the defined treatment objectives and shall also include periodic review by the court.

(11) "Treatment facility" means detoxification centers, outpatient clinics, residential care facilities, hospitals and such other facilities determined to be suitable by the [*Department of Human Services*] **authority**, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation.

SECTION 500. ORS 430.535 is amended to read:

430.535. (1) The [*Department of Human Services*] **Oregon Health Authority** and the Governor's Council on Alcohol and Drug Abuse Programs shall, subject to the availability of funds, develop bilingual forms to assist non-English-speaking persons in understanding their rights under ORS 430.450 to 430.555.

(2) The [*department*] **authority** shall assist county mental health programs in the development of comprehensive and coordinated identification, evaluation, treatment, education and rehabilitation services for the drug-dependent person. The State Plan for Drug Problems shall be consistent with such system.

SECTION 501. ORS 430.540 is amended to read:

430.540. (1) The county mental health program director shall designate sites for evaluation in the county plan of individuals who may be or are known to be drug dependent. The [*Department of Human Services*] **Oregon Health Authority** shall establish standards for such sites and periodically publish a list of approved sites.

(2) The costs of evaluation shall be borne by the county of appropriate jurisdiction.

SECTION 502. ORS 430.545 is amended to read:

430.545. (1) Evaluation sites provided for under ORS 430.450 to 430.555 shall conduct such procedures as may be necessary to determine if an individual is a drug-dependent person. A person shall be evaluated only with that person's written consent. Subject to approval of the [*Department of Human Services*] **Oregon Health Authority**, the director of a treatment facility or the director of an evaluation site may designate personnel to provide treatment or evaluation as appropriate under the lawful limitations of their certification, licensure or professional practice.

(2) Antagonist drugs may be administered for diagnosis of addiction by a registered nurse at an approved site when the nurse has completed required training and a physician is available on call. Antagonist drugs shall not be administered without informed written consent of the person.

SECTION 503. ORS 430.560 is amended to read:

430.560. (1) The [*Department of Human Services*] **Oregon Health Authority** shall establish for drug-dependent persons treatment programs that involve:

(a) Detoxification;

(b) Detoxification with acupuncture and counseling; and

(c) The supplying of synthetic opiates to such persons under close supervision and control. However, the supplying of synthetic opiates shall be used only when detoxification or detoxification with acupuncture and counseling has proven ineffective or upon a written request of a physician licensed by the Oregon Medical Board showing medical need for synthetic opiates if the request is approved in writing by the parole and probation officer, if any, of the drug-dependent person. The

copy of the request and the approval must be included in the client's permanent treatment and releasing authority records.

(2) Notwithstanding subsection (1) of this section, synthetic opiates may be made available to a pregnant woman with her informed consent without prior resort to the treatment programs described in subsection (1)(a) and (b) of this section.

(3) In establishing the programs authorized by subsection (1) of this section, the [Department of Human Services] **Oregon Health Authority** may enter into contracts with detoxification programs, physicians licensed by the Oregon Medical Board, acupuncturists, counselors, licensed pharmacies and any agency of this state or a political subdivision in this state to conduct the required examinations and to supply the services used in the programs.

(4) The [department] **authority** shall establish rules of eligibility for the programs authorized by ORS 430.565 and this section, considering such factors as residency, duration of dependency on drugs or controlled substances, failure of previous attempts at abstinence and other relevant factors. The [department] **authority** shall establish reasonable fees for participation in the programs.

(5) Pursuant to ORS chapter 183, the [department] **authority** shall adopt rules governing the administration of the programs authorized by ORS 430.565 and this section.

SECTION 504. ORS 430.565 is amended to read:

430.565. The provisions of any law restricting the use, possession, control or administration of a controlled substance shall not apply to any physician, pharmacist or other person while participating in the program authorized by ORS 430.560 (1)(c) so long as the physician, pharmacist or other person complies with provisions of ORS 430.560 and this section and the rules of the [Department of Human Services] **Oregon Health Authority** made pursuant to ORS 430.560 and this section.

SECTION 505. ORS 430.570 is amended to read:

430.570. The [Department of Human Services] **Oregon Health Authority** shall cause information concerning the usefulness and feasibility of opiate inhibitors to be made available to persons involved in administering diversion programs, corrections programs and other programs for drug dependent persons.

SECTION 506. ORS 430.610 is amended to read:

430.610. It is declared to be the policy and intent of the Legislative Assembly that:

(1) Subject to the availability of funds, [mental health] services should be available to all persons with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers, regardless of age, county of residence or ability to pay;

(2) The Department of Human Services, **the Oregon Health Authority** and other state agencies shall conduct their activities in the least costly and most efficient manner so that delivery of services to persons with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers, shall be effective and coordinated;

(3) To the greatest extent possible, mental health **and developmental disabilities** services shall be delivered in the community where the person lives in order to achieve maximum coordination of services and minimum disruption in the life of the person; and

(4) The State of Oregon shall encourage, aid and financially assist its county governments in the establishment and development of community mental health [and] **programs or community** developmental disabilities programs, including but not limited to, treatment and rehabilitation services for persons with mental or emotional disturbances, mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers, and prevention of these problems through county administered community mental health [and] **programs or community** developmental disabilities programs.

SECTION 507. ORS 430.620 is amended to read:

430.620. (1) The county court or board of county commissioners, or its representatives designated by it for the purpose, of any county, on behalf of the county, may:

(a) In conformity with the rules of the Department of Human Services, establish and operate, or contract with a public agency or private corporation for, a community *[mental health and]* developmental disabilities program.

(b) In conformity with the rules of the Oregon Health Authority, establish and operate, or contract with a public agency or private corporation for, a community mental health program.

[(b)] (c) Cooperate, coordinate or act jointly with any other county or counties or any appropriate officer or agency of such counties in establishing and operating or contracting for a community mental health *[and]* **program or community** developmental disabilities program to service all such counties in conformity with the regulations of the department **or the authority**.

[(c)] (d) Expend county moneys for the purposes referred to in paragraph (a) *[or (b)]*, **(b) or (c)** of this subsection.

[(d)] (e) Accept and use or expend property or moneys from any public or private source made available for the purposes referred to in paragraph (a) *[or (b)]*, **(b) or (c)** of this subsection.

(2) All officers and agencies of a county, upon request, shall cooperate insofar as possible with the county court or board of county commissioners, or its designated representatives, in conducting programs and carrying on and coordinating activities under subsection (1) of this section.

SECTION 508. ORS 430.630 is amended to read:

430.630. (1) In addition to any other requirements that may be established by rule by the *[Department of Human Services and subject to the availability of funds, each community mental health and developmental disabilities program]* **Oregon Health Authority, each community mental health program and community developmental disabilities program, subject to the availability of funds**, shall provide the following basic services to persons with mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers:

(a) Outpatient services;

(b) Aftercare for persons released from hospitals and training centers;

(c) Training, case and program consultation and education for community agencies, related professions and the public;

(d) Guidance and assistance to other human service agencies for joint development of prevention programs and activities to reduce factors causing mental retardation, developmental disabilities, alcohol abuse, alcoholism, drug abuse and drug dependence; and

(e) Age-appropriate treatment options for older adults.

(2) As alternatives to state hospitalization, it is the responsibility of the community mental health *[and]* **or community** developmental disabilities program to ensure that, subject to the availability of funds, the following services for persons with mental retardation, developmental disabilities, alcoholism or drug dependence, and persons who are alcohol or drug abusers, are available when needed and approved by the *[Department of Human Services]* **Oregon Health Authority**:

(a) Emergency services on a 24-hour basis, such as telephone consultation, crisis intervention and prehospital screening examination;

(b) Care and treatment for a portion of the day or night, which may include day treatment centers, work activity centers and preschool programs;

(c) Residential care and treatment in facilities such as halfway houses, detoxification centers and other community living facilities;

(d) Continuity of care, such as that provided by service coordinators, community case development specialists and core staff of federally assisted community mental health centers;

(e) Inpatient treatment in community hospitals; and

(f) Other alternative services to state hospitalization as defined by the Department **of Human Services or the Oregon Health Authority**.

(3) In addition to any other requirements that may be established by rule of the *[department, each community mental health and developmental disabilities]* **Oregon Health Authority, each community mental health** program, subject to the availability of funds, shall provide or ensure the provision of the following services to persons with mental or emotional disturbances:

- (a) Screening and evaluation to determine the client's service needs;
- (b) Crisis stabilization to meet the needs of persons with acute mental or emotional disturbances, including the costs of investigations and prehearing detention in community hospitals or other facilities approved by the [*department*] **authority** for persons involved in involuntary commitment procedures;
- (c) Vocational and social services that are appropriate for the client's age, designed to improve the client's vocational, social, educational and recreational functioning;
- (d) Continuity of care to link the client to housing and appropriate and available health and social service needs;
- (e) Psychiatric care in state and community hospitals, subject to the provisions of subsection (4) of this section;
- (f) Residential services;
- (g) Medication monitoring;
- (h) Individual, family and group counseling and therapy;
- (i) Public education and information;
- (j) Prevention of mental or emotional disturbances and promotion of mental health;
- (k) Consultation with other community agencies;
- (L) Preventive mental health services for children and adolescents, including primary prevention efforts, early identification and early intervention services. Preventive services should be patterned after service models that have demonstrated effectiveness in reducing the incidence of emotional, behavioral and cognitive disorders in children. As used in this paragraph:
 - (A) "Early identification" means detecting emotional disturbance in its initial developmental stage;
 - (B) "Early intervention services" for children at risk of later development of emotional disturbances means programs and activities for children and their families that promote conditions, opportunities and experiences that encourage and develop emotional stability, self-sufficiency and increased personal competence; and
 - (C) "Primary prevention efforts" means efforts that prevent emotional problems from occurring by addressing issues early so that disturbances do not have an opportunity to develop; and
- (m) Preventive mental health services for older adults, including primary prevention efforts, early identification and early intervention services. Preventive services should be patterned after service models that have demonstrated effectiveness in reducing the incidence of emotional and behavioral disorders and suicide attempts in older adults. As used in this paragraph:
 - (A) "Early identification" means detecting emotional disturbance in its initial developmental stage;
 - (B) "Early intervention services" for older adults at risk of development of emotional disturbances means programs and activities for older adults and their families that promote conditions, opportunities and experiences that encourage and maintain emotional stability, self-sufficiency and increased personal competence and that deter suicide; and
 - (C) "Primary prevention efforts" means efforts that prevent emotional problems from occurring by addressing issues early so that disturbances do not have an opportunity to develop.
- (4) A community mental health [*and developmental disabilities*] program shall assume responsibility for psychiatric care in state and community hospitals, as provided in subsection (3)(e) of this section, in the following circumstances:
 - (a) The person receiving care is a resident of the county served by the program. For purposes of this paragraph, "resident" means the resident of a county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court-committed person with a mental illness has been conditionally released.
 - (b) The person has been hospitalized involuntarily or voluntarily, pursuant to ORS 426.130 or 426.220, except for persons confined to the Secure Child and Adolescent Treatment Unit at Oregon State Hospital, or has been hospitalized as the result of a revocation of conditional release.

(c) Payment is made for the first 60 consecutive days of hospitalization.

(d) The hospital has collected all available patient payments and third-party reimbursements.

(e) In the case of a community hospital, the *[department]* **authority** has approved the hospital for the care of persons with mental or emotional disturbances, the community mental health *[and developmental disabilities]* program has a contract with the hospital for the psychiatric care of residents and a representative of the program approves voluntary or involuntary admissions to the hospital prior to admission.

(5) Subject to the review and approval of the *[department, a community mental health and]* **Department of Human Services**, a developmental disabilities program may initiate additional services after the services defined in this section are provided.

(6) Subject to the review and approval of the Oregon Health Authority, a mental health program may initiate additional services after the services defined in this section are provided.

[(6)] **(7)** Each community mental health *[and]* **program and community** developmental disabilities program and the state hospital serving the program's geographic area shall enter into a written agreement concerning the policies and procedures to be followed by the program and the hospital when a patient is admitted to, and discharged from, the hospital and during the period of hospitalization.

[(7)] **(8)** Each community mental health *[and developmental disabilities]* program shall have a mental health advisory committee, appointed by the board of county commissioners or the county court or, if two or more counties have combined to provide mental health services, the boards or courts of the participating counties or, in the case of a Native American reservation, the tribal council.

[(8)] **(9)** A community mental health *[and developmental disabilities]* program may request and the *[department]* **authority** may grant a waiver regarding provision of one or more of the services described in subsection (3) of this section upon a showing by the county and a determination by the *[department]* **authority** that persons with mental or emotional disturbances in that county would be better served and unnecessary institutionalization avoided.

[(9)] **(10)** Each community mental health *[and developmental disabilities]* program shall cooperate fully with the Governor's Council on Alcohol and Drug Abuse Programs in the performance of its duties.

[(10)(a)] **(11)(a)** As used in this subsection, "local mental health authority" means one of the following entities:

(A) The board of county commissioners of one or more counties that establishes or operates a community mental health *[and developmental disabilities]* program;

(B) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(C) A regional local mental health authority comprised of two or more boards of county commissioners.

(b) Each local mental health authority that provides mental health services shall determine the need for local mental health services and adopt a comprehensive local plan for the delivery of mental health services for children, families, adults and older adults that describes the methods by which the local mental health authority shall provide those services. The local mental health authority shall review and revise the local plan biennially. The purpose of the local plan is to create a blueprint to provide mental health services that are directed by and responsive to the mental health needs of individuals in the community served by the local plan.

(c) The local plan shall identify ways to:

(A) Coordinate and ensure accountability for all levels of care described in paragraph (e) of this subsection;

(B) Maximize resources for consumers and minimize administrative expenses;

(C) Provide supported employment and other vocational opportunities for consumers;

(D) Determine the most appropriate service provider among a range of qualified providers;

- (E) Ensure that appropriate mental health referrals are made;
 - (F) Address local housing needs for persons with mental health disorders;
 - (G) Develop a process for discharge from state and local psychiatric hospitals and transition planning between levels of care or components of the system of care;
 - (H) Provide peer support services, including but not limited to drop-in centers and paid peer support;
 - (I) Provide transportation supports; and
 - (J) Coordinate services among the criminal and juvenile justice systems, adult and juvenile corrections systems and local mental health programs to ensure that persons with mental illness who come into contact with the justice and corrections systems receive needed care and to ensure continuity of services for adults and juveniles leaving the corrections system.
- (d) When developing a local plan, a local mental health authority shall:
- (A) Coordinate with the budgetary cycles of state and local governments that provide the local mental health authority with funding for mental health services;
 - (B) Involve consumers, advocates, families, service providers, schools and other interested parties in the planning process;
 - (C) Coordinate with the local public safety coordinating council to address the services described in paragraph (c)(J) of this subsection;
 - (D) Conduct a population based needs assessment to determine the types of services needed locally;
 - (E) Determine the ethnic, age-specific, cultural and diversity needs of the population served by the local plan;
 - (F) Describe the anticipated outcomes of services and the actions to be achieved in the local plan;
 - (G) Ensure that the local plan coordinates planning, funding and services with:
 - (i) The educational needs of children, adults and older adults;
 - (ii) Providers of social supports, including but not limited to housing, employment, transportation and education; and
 - (iii) Providers of physical health and medical services;
 - (H) Describe how funds, other than state resources, may be used to support and implement the local plan;
 - (I) Demonstrate ways to integrate local services and administrative functions in order to support integrated service delivery in the local plan; and
 - (J) Involve the local mental health advisory committees described in subsection [(7)] (8) of this section.
- (e) The local plan must describe how the local mental health authority will ensure the delivery of and be accountable for clinically appropriate services in a continuum of care based on consumer needs. The local plan shall include, but not be limited to, services providing the following levels of care:
- (A) Twenty-four-hour crisis services;
 - (B) Secure and nonsecure extended psychiatric care;
 - (C) Secure and nonsecure acute psychiatric care;
 - (D) Twenty-four-hour supervised structured treatment;
 - (E) Psychiatric day treatment;
 - (F) Treatments that maximize client independence;
 - (G) Family and peer support and self-help services;
 - (H) Support services;
 - (I) Prevention and early intervention services;
 - (J) Transition assistance between levels of care;
 - (K) Dual diagnosis services;
 - (L) Access to placement in state-funded psychiatric hospital beds;
 - (M) Precommitment and civil commitment in accordance with ORS chapter 426; and

(N) Outreach to older adults at locations appropriate for making contact with older adults, including senior centers, long term care facilities and personal residences.

(f) In developing the part of the local plan referred to in paragraph (c)(J) of this subsection, the local mental health authority shall collaborate with the local public safety coordinating council to address the following:

(A) Training for all law enforcement officers on ways to recognize and interact with persons with mental illness, for the purpose of diverting them from the criminal and juvenile justice systems;

(B) Developing voluntary locked facilities for crisis treatment and follow-up as an alternative to custodial arrests;

(C) Developing a plan for sharing a daily jail and juvenile detention center custody roster and the identity of persons of concern and offering mental health services to those in custody;

(D) Developing a voluntary diversion program to provide an alternative for persons with mental illness in the criminal and juvenile justice systems; and

(E) Developing mental health services, including housing, for persons with mental illness prior to and upon release from custody.

(g) Services described in the local plan shall:

(A) Address the vision, values and guiding principles described in the Report to the Governor from the Mental Health Alignment Workgroup, January 2001;

(B) Be provided to children, older adults and families as close to their homes as possible;

(C) Be culturally appropriate and competent;

(D) Be, for children, older adults and adults with mental health needs, from providers appropriate to deliver those services;

(E) Be delivered in an integrated service delivery system with integrated service sites or processes, and with the use of integrated service teams;

(F) Ensure consumer choice among a range of qualified providers in the community;

(G) Be distributed geographically;

(H) Involve consumers, families, clinicians, children and schools in treatment as appropriate;

(I) Maximize early identification and early intervention;

(J) Ensure appropriate transition planning between providers and service delivery systems, with an emphasis on transition between children and adult mental health services;

(K) Be based on the ability of a client to pay;

(L) Be delivered collaboratively;

(M) Use age-appropriate, research-based quality indicators;

(N) Use best-practice innovations; and

(O) Be delivered using a community-based, multisystem approach.

(h) A local mental health authority shall submit to the [*Department of Human Services*] **Oregon Health Authority** a copy of the local plan and biennial revisions adopted under paragraph (b) of this subsection at time intervals established by the [*department*] **authority**.

(i) Each local commission on children and families shall reference the local plan for the delivery of mental health services in the local coordinated comprehensive plan created pursuant to ORS 417.775.

SECTION 509. ORS 430.632 is amended to read:

430.632. A local mental health authority shall submit to the [*Department of Human Services*] **Oregon Health Authority** by October 1 of each even-numbered year a report on the implementation of the comprehensive local plan adopted under ORS 430.630 [(10)] (11).

SECTION 510. ORS 430.635 is amended to read:

430.635. The children's mental health programs of the [*Department of Human Services*] **Oregon Health Authority** shall address preventive services under ORS 430.630 (3)(L). The [*department*] **authority** budget shall give high priority to such services.

SECTION 511. ORS 430.640 is amended to read:

430.640. (1) The [*Department of Human Services*] **Oregon Health Authority**, in carrying out the legislative policy declared in ORS 430.610, subject to the availability of funds, shall:

(a) Assist Oregon counties and groups of Oregon counties in the establishment and financing of community mental health [*and developmental disabilities*] programs operated or contracted for by one or more counties.

(b) If a county declines to operate or contract for a community mental health [*and developmental disabilities*] program, contract with another public agency or private corporation to provide the program. The county must be provided with an opportunity to review and comment.

(c) In an emergency situation when no community mental health [*and developmental disabilities*] program is operating within a county or when a county is unable to provide a service essential to public health and safety, operate the program or service on a temporary basis.

(d) At the request of the tribal council of a federally recognized tribe of Native Americans, contract with the tribal council for the establishment and operation of a community mental health [*and developmental disabilities*] program in the same manner [*that the department*] **in which the authority** contracts with a county court or board of county commissioners.

(e) If a county agrees, contract with a public agency or private corporation for all services within one or more of the following program areas: [*Mental or emotional disturbances, drug abuse, mental retardation or other developmental disabilities and alcohol abuse and alcoholism*]

(A) Mental or emotional disturbances.

(B) Drug abuse.

(C) Alcohol abuse and alcoholism.

(f) Approve or disapprove the biennial plan and budget information for the establishment and operation of each community mental health [*and developmental disabilities*] program. Subsequent amendments to or modifications of an approved plan or budget information involving more than 10 percent of the state funds provided for services under ORS 430.630 may not be placed in effect without prior approval of the [*department*] **authority**. However, an amendment or modification affecting 10 percent or less of state funds for services under ORS 430.630 within the portion of the program for persons with mental or emotional disturbances[, *or within the portion for persons with mental retardation or developmental disabilities*] or within the portion for persons with alcohol or drug dependence may be made without [*department*] **authority** approval.

(g) Make all necessary and proper rules to govern the establishment and operation of community mental health [*and developmental disabilities*] programs, including adopting rules defining the range and nature of the services which shall or may be provided under ORS 430.630.

(h) Collect data and evaluate services in the state hospitals in accordance with the same methods prescribed for community mental health [*and developmental disabilities*] programs under ORS 430.665.

(i) Develop guidelines that include, for the development of comprehensive local plans in consultation with local mental health authorities:

(A) The use of integrated services;

(B) The outcomes expected from services and programs provided;

(C) Incentives to reduce the use of state hospitals;

(D) Mechanisms for local sharing of risk for state hospitalization;

(E) The provision of clinically appropriate levels of care based on an assessment of the mental health needs of consumers;

(F) The transition of consumers between levels of care; and

(G) The development, maintenance and continuation of older adult mental health programs with mental health professionals trained in geriatrics.

(j) Work with local mental health authorities to provide incentives for community-based care whenever appropriate while simultaneously ensuring adequate statewide capacity.

(k) Provide technical assistance and information regarding state and federal requirements to local mental health authorities throughout the local planning process required under ORS 430.630 [(10)] **(11)**.

(L) Provide incentives for local mental health authorities to enhance or increase vocational placements for adults with mental health needs.

(m) Develop or adopt nationally recognized system-level performance measures, linked to the Oregon Benchmarks, for state-level monitoring and reporting of mental health services for children, adults and older adults, including but not limited to quality and appropriateness of services, outcomes from services, structure and management of local plans, prevention of mental health disorders and integration of mental health services with other needed supports.

(n) Develop standardized criteria for each level of care described in ORS 430.630 [(10)] (11), including protocols for implementation of local plans, strength-based mental health assessment and case planning.

(o) Develop a comprehensive long-term plan for providing appropriate and adequate mental health treatment and services to children, adults and older adults that is derived from the needs identified in local plans, is consistent with the vision, values and guiding principles in the Report to the Governor from the Mental Health Alignment Workgroup, January 2001, and addresses the need for and the role of state hospitals.

(p) Report biennially to the Governor and the Legislative Assembly on the progress of the local planning process and the implementation of the local plans adopted under ORS 430.630 [(10)(b)] (11)(b) and the state planning process described in paragraph (o) of this subsection, and on the performance measures and performance data available under paragraph (m) of this subsection.

(q) On a periodic basis, not to exceed 10 years, reevaluate the methodology used to estimate prevalence and demand for mental health services using the most current nationally recognized models and data.

(r) Encourage the development of regional local mental health authorities comprised of two or more boards of county commissioners that establish or operate a community mental health [and developmental disabilities] program.

(2) The [department] **Oregon Health Authority** may provide technical assistance and other incentives to assist in the planning, development and implementation of regional local mental health authorities whenever the [department] **Oregon Health Authority** determines that a regional approach will optimize the comprehensive local plan described under ORS 430.630 [(10)] (11).

(3) The Department of Human Services in carrying out the legislative policy declared in ORS 430.610, subject to the availability of funds, shall:

(a) Assist Oregon counties and groups of Oregon counties in the establishment and financing of community developmental disabilities programs operated or contracted for by one or more counties.

(b) If a county declines to operate or contract for a community developmental disabilities program, contract with another public agency or private corporation to provide the program. The county must be provided with an opportunity to review and comment.

(c) In an emergency situation when no community developmental disabilities program is operating within a county, operate the program or service on a temporary basis.

(d) At the request of the tribal council of a federally recognized tribe of Native Americans, contract with the tribal council for the establishment and operation of a community developmental disabilities program in the same manner in which the department contracts with a county court or board of county commissioners.

(e) If a county agrees, contract with a public agency or private corporation for all developmental disabilities services.

(f) Approve or disapprove the biennial plan and budget information for the establishment and operation of each community developmental disabilities program. Subsequent amendments to or modifications of an approved plan or budget information involving more than 10 percent of the state funds provided for services under ORS 430.630 may not be placed in effect without prior approval of the department. However, an amendment or modification affecting 10 percent or less of state funds for services under ORS 430.630 within the portion of the program for persons with developmental disabilities may be made without department approval.

(g) Make all necessary and proper rules to govern the establishment and operation of community developmental disabilities programs.

[(3)] (4) The enumeration of duties and functions in [subsection (1)] **subsections (1) and (2)** of this section shall not be deemed exclusive nor construed as a limitation on the powers and authority vested in the department **or the authority** by other provisions of law.

SECTION 512. ORS 430.665 is amended to read:

430.665. (1) In order to improve services to persons with mental or emotional disturbances and provide information for uniform analysis, each community mental health [and developmental disabilities] program shall collect and report data and evaluate programs in accordance with methods prescribed by the [Department of Human Services] **Oregon Health Authority** after consultation with the program directors.

(2) Information collected by the [department] **authority** under subsection (1) of this section shall include, but need not be limited to:

- (a) Numbers of persons served;
- (b) Ages of persons served;
- (c) Types of services provided; and
- (d) Cost of services.

(3) Within the limits of available funds allocated for the administration of community mental health [and developmental disabilities] programs, community mental health [and developmental disabilities] programs shall collect data and evaluate programs with moneys provided by the [department. The department] **authority. The authority** shall distribute funds so that programs within the same population grouping shall receive equal amounts of funds. The population groupings are:

- (a) More than 400,000 population.
- (b) Less than 400,000 but more than 100,000.
- (c) Less than 100,000 but more than 50,000.
- (d) Less than 50,000.

(4) During the first biennium that a new service is funded by the [department] **authority**, two percent of the service funds shall be set aside for use in data collection and evaluation of the service. Thereafter, the service shall be evaluated as a part of the total community mental health program.

SECTION 513. ORS 430.670 is amended to read:

430.670. (1) A community [mental health and] developmental disabilities program may provide services by contracting [therefor] with a public agency, private corporation or individual. All elements of service provided for in the contract shall be considered as a part of a community [mental health] **developmental disabilities** program for all purposes of ORS 430.610 to 430.695. Contracts authorized by this section shall comply with rules adopted by the Department of Human Services.

(2) A community mental health program may provide services by contracting with a public agency, private corporation or individual. All elements of service provided for in the contract shall be considered as a part of a community mental health program for all purposes of ORS 430.610 to 430.695. Contracts authorized by this section shall comply with rules adopted by the Oregon Health Authority.

[(2)] (3) A private corporation that contracts with a county, [or] the Department of Human Services **or the Oregon Health Authority** to operate a community mental health [and] **program or community** developmental disabilities program shall provide an opportunity for competition among private care providers when awarding subcontracts for provision of services described in ORS 430.630 (1) to (3).

[(3)] (4) In keeping with the principles of family support expressed in ORS 417.342 and notwithstanding subsection [(2)] (3) of this section or ORS 291.047 (3), an entity operating a community mental health [and] **program or community** developmental disabilities program may purchase services for an individual from a service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the

individual's family or the individual's guardian, as long as the service provider has been approved by the department **or the authority** to provide such service.

SECTION 514. ORS 430.672 is amended to read:

430.672. (1) Except for community mental health *[and]* **programs or community** developmental disabilities programs operated by the county, a county may impose only standards, requirements and conditions for mental health *[and]* **or** developmental disabilities programs that are substantially similar to the standards, requirements and conditions established for such programs by the Department of Human Services **or the Oregon Health Authority**.

(2) When a county contracts with a public agency or private corporation for a community mental health *[and]* **program or community** developmental disabilities program, the county shall include in the contract only terms that are substantially similar to model contract terms developed by the department **under ORS 430.640 (3)(g) or the authority** under ORS 430.640 (1)(g). The county may not add contractual requirements, including qualifications for contractor selection, that are nonessential to the services provided under ORS 430.630. The county may add contract requirements that the county considers necessary to ensure the siting and maintenance of facilities of the community mental health *[and]* **program or community** developmental disabilities program.

(3) The provisions of subsections (1) and (2) of this section apply only insofar as funds are provided by the department to the county for *[community mental health and developmental disabilities programs]* **community developmental disabilities programs or by the authority to the county for community mental health programs**.

[(4) As used in this section, "community mental health and developmental disabilities program" includes those program elements that serve only persons with developmental disabilities.]

SECTION 515. ORS 430.673 is amended to read:

430.673. (1) When a dispute exists between a county and a community *[mental health and]* developmental disabilities program that is a private corporation or individual regarding the terms of their contract or the interpretation of an administrative rule of the Department of Human Services relating to department programs under this chapter, either party may request mediation under rules adopted by the department.

(2) When a dispute exists between a county and a community mental health program that is a private corporation or individual regarding the terms of their contract or the interpretation of an administrative rule of the Oregon Health Authority relating to authority programs under this chapter, either party may request mediation under rules adopted by the authority.

[(2)] **(3)** A county may not retaliate against a community mental health *[and]* **program or community** developmental disabilities program solely because the program:

- (a) Requested mediation under subsection (1) **or (2)** of this section;
- (b) Requested dispute resolution or filed an appeal under rules adopted by the department *[under this section with respect to a dispute described in subsection (1) of this section]* **or the authority**; or
- (c) Initiated a contested case proceeding otherwise available under ORS chapter 183 with respect to a dispute described in subsection (1) **or (2)** of this section.

[(3)] **(4)** For purposes of this section, "retaliate" means an adverse action taken by a county against a community mental health *[and]* **program or a community** developmental disabilities program to:

(a) Materially alter or terminate the contract between the county and the community mental health *[and]* **program or community** developmental disabilities program; or

(b) Fail to renew the contract between the county and the community mental health *[and]* **program or community** developmental disabilities program.

[(4)] **(5)** Notwithstanding any other remedy provided by law, a community mental health *[and]* **program or community** developmental disabilities program against which a county has retaliated in violation of subsection *[(2)]* **(3)** of this section may bring an action against the county for actual damages or \$1,000, whichever is greater. The court shall award reasonable attorney fees to the prevailing party in an action under this subsection. An action described in this section shall be

considered a tort claim under ORS 30.260 to 30.300. Except as provided in this section, the provisions of ORS 30.260 to 30.300 apply to an action described in this section.

[5] (6) In accordance with any applicable provision of ORS chapter 183, the department **or the authority** may adopt rules to carry out the provisions of this section.

SECTION 516. ORS 430.675 is amended to read:

430.675. Within the limits of available funds, community mental health [*and developmental disabilities*] programs shall provide those services as defined in ORS 430.630 (3)(a) to (h) to persons in the following order of priority:

(1) Those persons who, in accordance with the assessment of professionals in the field of mental health, are at immediate risk of hospitalization for the treatment of mental or emotional disturbances or are in need of continuing services to avoid hospitalization or pose a hazard to the health and safety of themselves, including the potential for suicide, or others and those persons under 18 years of age who, in accordance with the assessment of professionals in the field of mental health, are at immediate risk of removal from their homes for treatment of mental or emotional disturbances or exhibit behavior indicating high risk of developing disturbances of a severe or persistent nature;

(2) Those persons who, because of the nature of their **mental** illness, their geographic location or their family income, are least capable of obtaining assistance from the private sector; and

(3) Those persons who, in accordance with the assessment of professionals in the field of mental health, are experiencing mental or emotional disturbances but will not require hospitalization in the foreseeable future.

SECTION 517. ORS 430.685 is amended to read:

430.685. In allocating funds for community mental health [*and developmental disabilities*] programs affecting persons with mental or emotional disturbances, the [*Department of Human Services*] **Oregon Health Authority** shall observe the following priorities:

(1) To [*assure*] **ensure** the establishment and operation of community mental health [*and developmental disabilities*] programs for persons with mental or emotional disturbances in every geographic area of the state to provide some services in each category of services described in ORS 430.630 (3) unless a waiver has been granted;

(2) To [*assure*] **ensure** survival of services that address the needs of persons within the priority of services under ORS 430.675 and that meet [*department*] **authority** standards;

(3) To develop the interest and capacity of community mental health [*and developmental disabilities*] programs to provide new or expanded services to meet the needs for services under ORS 430.675 and to promote the equal availability of such services throughout the state; and

(4) To encourage and assist in the development of model projects to test new services and innovative methods of service delivery.

SECTION 518. ORS 430.690 is amended to read:

430.690. (1) Within the limits of state funds, community mental health [*and developmental disabilities*] program services shall be funded as follows:

(a) Services defined in ORS 430.630 (1) and (2) shall be funded up to 100 percent with state funds.

(b) State funds available for payments to community mental health [*and developmental disabilities*] programs for services under ORS 430.630 (3) shall be paid by the [*Department of Human Services*] **Oregon Health Authority** to the programs under the priorities set forth in ORS 430.685.

(2) If a group of counties acts jointly to operate a community mental health [*and*] **program or community** developmental disabilities program, state funds shall be allocated, and the counties' contributions shall be prorated, in accordance with the agreement establishing the program.

(3) The counties or other entities operating community mental health [*and*] **programs or community** developmental disabilities programs shall not be required to match funds granted under subsections (1) and (2) of this section. However, the [*department*] **Department of Human Services or the Oregon Health Authority** may require matching funds if they are required as a condition of receipt of federal funds and the county or entity agrees to match funds.

(4) A reasonable portion of state funds granted under subsection (1)(b) of this section may be expended by community mental health *[and developmental disabilities]* programs and their subcontractors for expenses incurred in administering services.

SECTION 519. ORS 430.693 is amended to read:

430.693. (1) If the *[Department of Human Services]* **Oregon Health Authority** uses a formula for allocating to counties moneys *[described in subsection (3) of this section]*, and if the formula includes population as a factor in determining the amount of each allocation, the *[department]* **authority** shall calculate the formula annually using the most current population data that is available.

(2) The *[department]* **authority** shall use as the source of the population data required by subsection (1) of this section the primary population research center that is part of the Oregon University System.

[(3) Subsection (1) of this section applies to moneys allocated to counties for community mental health and addiction services.]

SECTION 520. ORS 430.695 is amended to read:

430.695. (1) Any program fees, third-party reimbursements, contributions or funds from any source, except client resources applied toward the cost of care in group homes for persons with mental retardation or mental illness and client resources and third-party payments for community psychiatric inpatient care, received by a community mental health *[and developmental disabilities]* program are not an offset to the costs of the services and may not be applied to reduce the program's eligibility for state funds, providing the funds are expended for mental health services approved by the *[Department of Human Services]* **Oregon Health Authority**.

(2) Within the limits of available funds, the *[department]* **authority** may contract for specialized, statewide and regional services including but not limited to group homes for persons with mental retardation or mental or emotional disturbances, day and residential treatment programs for children and adolescents with mental or emotional disturbances and community services for clients of the Psychiatric Security Review Board.

(3) Fees and third-party reimbursements, including all amounts paid pursuant to Title XIX of the Social Security Act by the Department of Human Services **or the Oregon Health Authority**, for *[services rendered by the community mental health and developmental disabilities program and interest earned on the funds]* **mental health services or developmental disabilities services and interest earned on those fees and reimbursements** shall be retained by the *[program]* **community mental health program or community developmental disabilities program** and expended for any service that meets the standards of *[the department]* **ORS 430.630**.

SECTION 521. ORS 430.705 is amended to read:

430.705. Notwithstanding ORS 430.640, the State of Oregon, through the *[Department of Human Services]* **Oregon Health Authority**, may establish the necessary facilities and provide comprehensive mental health services for children throughout the state. These services may include, but need not be limited to:

(1) The prevention of mental illness, emotional disturbances and drug dependency in children; and

(2) The treatment of children with mental illness, emotional disturbances and drug dependency.

SECTION 522. ORS 430.715 is amended to read:

430.715. The *[Department of Human Services]* **Oregon Health Authority** may contract for general hospital services and may provide or contract with public or private agencies or persons to provide child care and residential treatment programs to implement the objectives of ORS 430.705. The *[Department of Human Services]* **authority** may also purchase or contract for specific services and supplies for treatment of individual children.

SECTION 523. ORS 430.725 is amended to read:

430.725. The *[Department of Human Services]* **Oregon Health Authority** shall have authority to contract with private, nonprofit agencies and persons for receipt of grants-in-aid and other funds to be applied to child mental health service programs.

SECTION 524. ORS 430.735 is amended to read:

430.735. As used in ORS 430.735 to 430.765:

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

- (a) Any death caused by other than accidental or natural means.
- (b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.
- (c) Willful infliction of physical pain or injury.
- (d) Sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult.
- (e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.

(2) "Adult" means a person 18 years of age or older with:

(a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) A mental illness who is receiving services from a community program or facility.

(3) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.

(4) "Care provider" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(5) "Community program" means a community mental health [and] **program or a community** developmental disabilities program as established in ORS 430.610 to 430.695.

(6) "Department" means the Department of Human Services.

(7) "Facility" means a residential treatment home or facility, residential care facility, adult foster home, residential training home or facility or crisis respite facility.

(8) "Law enforcement agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police; or
- (d) Any district attorney.

(9) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatric physician and surgeon, 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 Services **or Oregon Health Authority**, county health department, community mental health [and] **program or community** developmental disabilities program or private agency contracting with a public body to provide any community mental health service;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist; or

(k) Any public official who comes in contact with adults in the performance of the official's duties.

SECTION 525. ORS 430.850 is amended to read:

430.850. (1) Subject to the availability of funds therefor, the [*Department of Human Services*] **Oregon Health Authority** may establish and administer a treatment program with courts, with the consent of the judge thereof, for any person convicted of driving under the influence of alcohol, or of any crime committed while the defendant was intoxicated when the judge has probable cause to believe the person is an alcoholic or problem drinker and would benefit from treatment, who is eligible under subsection (2) of this section to participate in such program. The program shall involve medical and mental treatment to include at least the supplying of disulfiram or any other agent that interferes with normal metabolic degradation of alcohol in the body resulting in an increase in acetaldehyde concentrate in the blood, at regular intervals and under close supervision and control.

(2) A person eligible to participate in the program is a person who:

(a) Has been convicted of driving under the influence of alcohol if such conviction has not been appealed, or if such conviction has been appealed, whose conviction has been sustained upon appeal; or

(b) Has been convicted of any crime committed while the defendant was intoxicated if such conviction has not been reversed on appeal, and when the judge has probable cause to believe the person is an alcoholic or problem drinker and would benefit from treatment; and

(c) Has been referred by the participating court to the [*Department of Human Services*] **authority** for participation in the treatment program; and

(d) Prior to sentencing, has been medically evaluated by the [*Department of Human Services*] **authority** and accepted by the [*department*] **authority** as a participant in the program; and

(e) Has consented as a condition to probation to participate in the program; and

(f) Has been sentenced to probation by the court, a condition of which probation is participation in the program according to the rules adopted by the [*Department of Human Services*] **authority** under ORS 430.870.

SECTION 526. ORS 430.860 is amended to read:

430.860. The [*Department of Human Services*] **Oregon Health Authority** may:

(1) Accept for medical evaluation any person meeting the conditions defined in ORS 430.850 (2)(a) or (b) and referred for participation in the program by a participating court, cause such medical evaluation to be made and report the results of the evaluation to the referring court;

(2) Within the limitation of funds available to the program, accept any person as a participant in the program who is eligible under ORS 430.850 (2) and whose medical evaluation shows the person suitable to participate in the program; and

(3) Report to the referring court the progress of, and any violation of rules of the [*department*] **authority** adopted under ORS 430.870 by, a participant.

SECTION 527. ORS 430.870 is amended to read:

430.870. The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules necessary to the efficient administration and functioning of the program and rules regulating the conduct of participants in the program. Rules regulating the conduct of participants in the program shall include but not be limited to rules requiring participants to keep appointments and the time, place and frequency of any dosages.

SECTION 528. ORS 430.880 is amended to read:

430.880. (1) The [*Department of Human Services*] **Oregon Health Authority** may accept gifts and apply for and accept grants or services from the federal government or any of its agencies, from associations, individuals and private corporations to carry out the purposes of ORS 430.850 to 430.880.

(2) All moneys received by the [*department*] **authority** under ORS 430.850 to 430.880 shall be paid into the State Treasury and deposited in the General Fund to the credit of a special account. Such moneys are appropriated continuously to the [*department*] **authority** for the purposes of ORS 430.850 to 430.880.

SECTION 529. ORS 430.920 is amended to read:

430.920. (1) The attending health care provider shall perform during the first trimester of pregnancy or as early as possible a risk assessment which shall include an assessment for drug and alcohol usage. If the results of the assessment indicate that the patient uses or abuses drugs or alcohol or uses unlawful controlled substances, the provider shall tell the patient about the potential health effects of continued substance abuse and recommend counseling by a trained drug or alcohol abuse counselor.

(2) The provider shall supply to the local public health administrator demographic information concerning patients described in subsection (1) of this section without revealing the identity of the patients. The local administrator shall use forms prescribed by the [Department of Human Services] **Oregon Health Authority** and shall send copies of the forms and any compilation made from the forms to the [Department of Human Services] **authority** at such times as the [department] **authority** may require by rule.

(3) The provider, if otherwise authorized, may administer or prescribe controlled substances that relieve withdrawal symptoms and assist the patient in reducing the need for unlawful controlled substances according to medically acceptable practices.

SECTION 530. ORS 430.925 is amended to read:

430.925. Subject to the availability of federal funds, the [Department of Human Services] **Oregon Health Authority** shall design and place in operation as soon as possible after August 5, 1989, two demonstration pilot projects in local health departments to alleviate the health related problems of pregnant and postpartum women and their infants which arise from substance use. One project shall be within a metropolitan statistical area and one project shall be in a rural area outside of a metropolitan statistical area. The project designs shall take account of the findings, policies and intent of ORS 430.900 to 430.930. Projects shall incorporate promising or innovative services and activities intended to realize the following goals:

(1) Promote the involvement and coordinated participation of multiple organizations in the delivery of comprehensive services for substance-using pregnant and postpartum women and their infants;

(2) Increase the availability and accessibility of prevention, early intervention and treatment services for these populations;

(3) Improve the identification of substance-using women and their recruitment into and retention in appropriate treatment programs;

(4) Decrease the incidence and prevalence of drug and alcohol use among pregnant and postpartum women;

(5) Decrease the incidence of pregnancy among women who use alcohol and other drugs through intensive family planning counseling and referral;

(6) Improve the birth outcomes of women who used alcohol and other drugs during pregnancy and to decrease the incidence of infants affected by maternal substance use;

(7) Reduce the severity of impairment among children born to substance-using women; and

(8) Promote continuing education among health providers to improve identification of pregnant women at risk of substance abuse or abusing substances and improved services to these women and their infants.

SECTION 531. ORS 430.955 is amended to read:

430.955. (1) The [Department of Human Services] **Oregon Health Authority** and the Oregon Health and Science University shall develop a standardized screening instrument designed to identify the use of substances during pregnancy.

(2) The [department] **authority** and the Oregon Health and Science University shall request the boards responsible for the licensing of health care providers and appropriate professional organizations to work with them to conduct a series of training sessions for health professionals who provide maternity care on how to assess drug use in pregnancy.

SECTION 532. ORS 431.035 is amended to read:

431.035. (1) The Director of [Human Services] **the Oregon Health Authority** may delegate to any of the officers and employees of the [Department of Human Services] **Oregon Health Authority**

the exercise or discharge in the director's name of any power, duty or function of whatever character vested in or imposed upon the director by the laws of Oregon. However, the power to administer oaths and affirmations, subpoena witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records may be exercised by an officer or employee of the [department] **authority** only when specifically delegated in writing by the director.

(2) The official act of any such person so acting in the director's name and by the authority of the director shall be deemed to be an official act of the director.

(3)(a) The Director of [Human Services] **the Oregon Health Authority** shall appoint a Public Health Director to perform the duties and exercise authority over public health emergency matters in the state and other duties as assigned by the director [of Human Services]. The director [of Human Services] may appoint the same person to serve as both the Public Health Director and the Public Health Officer appointed under ORS 431.045.

(b) The Public Health Director shall be an assistant director appointed by the Director of [Human Services] **the Oregon Health Authority** in accordance with ORS 409.130.

(c) The Public Health Director shall delegate to an employee of the [department] **authority** the duties, powers and functions granted to the Public Health Director by ORS 431.264 and 433.443 in the event of the absence from the state or the unavailability of the director. The delegation must be in writing.

SECTION 533. ORS 431.045 is amended to read:

431.045. The Director of [Human Services] **the Oregon Health Authority** shall appoint a physician licensed by the Oregon Medical Board and certified by the American Board of Preventive Medicine who shall serve as the Public Health Officer and be responsible for the medical and paramedical aspects of the health programs within the [Department of Human Services] **Oregon Health Authority**.

SECTION 534. ORS 431.110 is amended to read:

431.110. Subject to ORS 417.300 and 417.305, the [Department of Human Services] **Oregon Health Authority** shall:

(1) Have direct supervision of all matters relating to the preservation of life and health of the people of the state.

(2) Keep the vital statistics and other health related statistics of the state.

(3) Make sanitary surveys and investigations and inquiries respecting the causes and prevention of diseases, especially of epidemics.

(4) Investigate, conduct hearings and issue findings in connection with annexations proposed by cities as provided in ORS 222.840 to 222.915.

(5) Have full power in the control of all communicable diseases.

(6) Have authority to send a representative of the [department] **authority** to any part of the state when deemed necessary.

(7) From time to time, publish and distribute to the public in such form as the [department] **authority** determines, such information as in its judgment may be useful in carrying on the work or purposes for which the [department] **authority** was established.

(8) Carry out the duties imposed on the [department] **authority** under ORS chapter 690.

SECTION 535. ORS 431.120 is amended to read:

431.120. The [Department of Human Services] **Oregon Health Authority** shall:

(1) Enforce state health policies and rules.

(2) Have the custody of all books, papers, documents and other property belonging to the State Health Commission, which may be deposited in the [department's] **authority's** office.

(3) Give any instructions that may be necessary, and forward them to the various local public health administrators throughout the state.

(4) Routinely conduct epidemiological investigations for each case of sudden infant death syndrome including, but not limited to, the identification of risk factors such as birth weight, maternal age, prenatal care, history of apnea and socioeconomic characteristics. The [department] **authority**

may conduct the investigations through local health departments only upon adoption by rule of a uniform epidemiological data collection method.

(5) Adopt rules related to loans and grants awarded under ORS 285B.560 to 285B.599 or 541.700 to 541.855 for the improvement of drinking water systems for the purpose of maintaining compliance with applicable state and federal drinking water quality standards. In adopting rules under this subsection, the [Department of Human Services] **authority** shall coordinate the [department's] **authority's** rulemaking process with the Water Resources Department and the Economic and Community Development Department in order to ensure that rules adopted under this subsection are consistent with rules adopted under ORS 285B.563 and 541.845.

(6) Control health care capital expenditures by administering the state certificate of need program pursuant to ORS 442.325 to 442.344.

SECTION 536. ORS 431.150 is amended to read:

431.150. (1) The local public health administrators are charged with the strict and thorough enforcement of the public health laws of this state in their districts, under the supervision and direction of the [Department of Human Services] **Oregon Health Authority**. They shall make an immediate report to the [department] **authority** of any violation of such laws coming to their notice by observation, or upon the complaint of any person, or otherwise.

(2) The [department] **authority** is charged with the thorough and efficient execution of the public health laws of this state in every part of the state, and with supervisory powers over all local public health administrators, to the end that all the requirements are complied with.

(3) The [department] **authority** may investigate cases of irregularity or violation of law. All local public health administrators shall aid the [department] **authority**, upon request, in such investigation.

(4) When any case of violation of the public health laws of this state is reported to any district attorney or official acting in said capacity, such official shall forthwith initiate and promptly follow up the necessary proceedings against the parties responsible for the alleged violations of law.

(5) Upon request of the [department] **authority**, the Attorney General shall likewise assist in the enforcement of the public health laws of this state.

SECTION 537. ORS 431.155 is amended to read:

431.155. (1) Whenever it appears to the [Department of Human Services] **Oregon Health Authority** that any person is engaged or about to engage in any acts or practices that constitute a violation of any statute relating to public health administered by the [department] **authority**, or any rule or order issued thereunder, the [department] **authority** may institute proceedings in the circuit courts to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such person, or its officers, agents, employees and representatives from further violation of such statute, rule or order, and enjoining upon them obedience thereto.

(2) The provisions of this section are in addition to and not in substitution of any other enforcement provisions contained in any statute administered by the [department] **authority**.

SECTION 538. ORS 431.157 is amended to read:

431.157. Pursuant to ORS 448.100 (1) and 446.425 (1), the county is delegated the authority granted to the Director of [Human Services] **the Oregon Health Authority** in ORS 431.155.

SECTION 539. ORS 431.170 is amended to read:

431.170. (1) The Director of [Human Services] **the Oregon Health Authority** shall take direct charge of the functions that are necessary to preserve the public health in any county or district whenever any county or district official fails or refuses to administer or enforce the public health laws or rules that the director or board is charged to enforce.

(2) The director may call to the aid of the director such assistance as is necessary for the enforcement of such statutes and rules, the expense of which shall be borne by the county or district making the use of this procedure necessary, to be paid out of the respective county or district treasury upon vouchers properly certified by the director.

SECTION 540. ORS 431.175 is amended to read:

431.175. If necessary, the Director of [*Human Services*] **the Oregon Health Authority** or a designee thereof, the State Fire Marshal or a designee thereof or an officer of a law enforcement agency may appear before any magistrate empowered to issue warrants in criminal cases, and require such magistrate to issue a warrant, directing it to any sheriff or deputy or any constable or police officer, to enter the described property or to remove any person or obstacle, or to defend any threatened violence to the director or a designee thereof, the State Fire Marshal or a designee thereof or an officer, upon entering private property, or to assist the director in any way.

SECTION 541. ORS 431.180 is amended to read:

431.180. Nothing in the public health laws shall be construed to empower or authorize the [*Department of Human Services*] **Oregon Health Authority** or its representatives, or any county or district board of health or its representatives to interfere in any manner with the individual's right to select the physician or mode of treatment of the choice of the individual, nor interfere with the practice of any person whose religion treats or administers to people who are sick or suffering by purely spiritual means. However, sanitary laws and rules must be complied with.

SECTION 542. ORS 431.190 is amended to read:

431.190. The Director of [*Human Services*] **the Oregon Health Authority** shall appoint, not later than 60 days after October 4, 1977, an advisory board to study the practices and procedures of the health care professions in this state and to recommend rules relating to the auditing of health care practices in hospitals which will:

- (1) Promote standard record keeping by hospitals and persons practicing any of the healing arts in hospitals;
- (2) Establish those criteria most appropriate for determining the proper objects of such auditing; and
- (3) Insure auditing of those practices and procedures most relevant to the causes and occurrence of professional negligence in hospitals.

SECTION 543. ORS 431.195 is amended to read:

431.195. (1) There is established the Oregon Public Health Advisory Board to serve as an advisory body to the [*Director of Human Services*] **Oregon Health Policy Board**.

(2) The members of the [*board*] **Oregon Public Health Advisory Board** shall be residents of this state and shall be appointed by the Governor. The [*board*] **Oregon Public Health Advisory Board** shall consist of 15 members at least one-half of whom shall be public members broadly representing the state as a whole and the others to include representatives of local government and public and private health providers.

(3) The Oregon Public Health Advisory Board shall:

(a) Advise the [*director*] **Oregon Health Policy Board** on policy matters related to the operation of the [*Department of Human Services*] **Oregon Health Authority**.

(b) Provide a review of statewide public health issues and make recommendations to the [*director*] **Oregon Health Policy Board**.

(c) Participate in public health policy development.

(4) Members shall be appointed for four-year terms. No person shall serve more than two consecutive terms.

(5) The [*board*] **Oregon Public Health Advisory Board** shall meet at least quarterly.

(6) Members of the [*board*] **Oregon Public Health Advisory Board** shall be entitled to compensation and expenses as provided in ORS 292.495.

(7) Vacancies on the [*board*] **Oregon Public Health Advisory Board** shall be filled by appointments of the Governor for the unexpired term.

SECTION 544. ORS 431.210 is amended to read:

431.210. (1) There is established in the General Fund the Public Health Account, classified separately as to federal and other moneys.

(2) All fines, fees, penalties, federal apportionments or contributions and other moneys received by the [*Department of Human Services*] **Oregon Health Authority** relating to public health shall be turned over to the State Treasurer not later than the 10th day of the calendar month next suc-

ceeding their receipt by the [*department*] **authority** and shall be credited to the Public Health Account.

(3) All moneys credited to the Public Health Account are continuously appropriated to the [*department*] **authority** for the payment of expenses of the [*department*] **authority**.

SECTION 545. ORS 431.220 is amended to read:

431.220. The [*Department of Human Services*] **Oregon Health Authority** shall keep a record of all moneys deposited in the Public Health Account. This 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.

SECTION 546. ORS 431.230 is amended to read:

431.230. (1) The [*Director of Human Services*] **Oregon Health Authority** may request the Oregon Department of Administrative Services to, and when so requested, the Oregon Department of Administrative Services shall, draw a payment on the Public Health Account in favor of the Director of [*Human Services*] **the Oregon Health Authority** in a sum not exceeding \$25,000, which sum shall be used by the director as an emergency or revolving fund.

(2) The emergency or revolving fund shall be deposited with the State Treasurer, and shall be at the disposal of the director [*of Human Services*]. It may be used to pay advances for salaries, travel expenses or any other proper claim against, or expense of, the [*Department of Human Services*] **authority** or the health-related licensing boards for whom the [*department*] **authority** provides accounting services.

(3) Claims for reimbursement of advances paid from the emergency or revolving fund shall be submitted to the [*department*] **authority** for approval. When such claims are so approved, payments covering them shall be drawn in favor of the director [*of Human Services*] and charged against the appropriate fund or account, and shall be used to reimburse the emergency or revolving fund.

(4) The [*department*] **authority** may establish petty cash funds within the emergency or revolving fund by drawing checks upon the emergency or revolving fund payable to the custodians of the petty cash funds.

SECTION 547. ORS 431.250 is amended to read:

431.250. (1) The [*Department of Human Services*] **Oregon Health Authority** hereby is designated as the state agency to apply to and receive from the federal government or any agency thereof such grants for promoting public health and the prevention of disease, including grants for cancer control and industrial hygiene programs, as may be available to this state or any of its political subdivisions or agencies.

(2) For the purposes of subsection (1) of this section, the [*department*] **authority** shall:

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

(b) Adopt, carry out and administer plans for those purposes. Plans so adopted shall be made statewide in application insofar as reasonably feasible, possible or permissible, and shall be so devised as to meet the approval of the federal government or any of its agencies, not inconsistent with the laws of the state.

SECTION 548. ORS 431.260 is amended to read:

431.260. As used in ORS 431.035 to 431.530:

(1) "Children's facility" has the meaning given that term in ORS 433.235.

(2) "Communicable disease" means a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in illness, death or severe disability.

(3) "Condition of public health importance" means a disease, syndrome, symptom, injury or other threat to public health that is identifiable on an individual or community level.

(4) "Disease outbreak" means a significant or notable increase in the number of cases of a disease or other condition of public health importance.

(5) "Epidemic" means the occurrence in a community or region of a group of similar conditions of public health importance that are in excess of normal expectancy and derived from a common or propagated source.

(6) "Local public health administrator" means the public health administrator of a county or health district appointed under ORS 431.418 or the authorized representative of that public health administrator.

(7) "Local public health authority" means a county government, or a health district created under ORS 431.414 or a person or agency a county or health district has contracted with to act as the local public health authority.

(8) "Public health law" means any statute, rule or local ordinance that has the purpose of promoting or protecting the public health and that establishes the authority of the [*Department of Human Services*] **Oregon Health Authority**, the Public Health Director, the Public Health Officer, a local public health authority or local public health administrator to enforce the statute, rule or local ordinance.

(9) "Public health measure" means a test, medical examination, treatment, isolation, quarantine or other measure imposed on an individual or group of individuals in order to prevent the spread of or exposure to a communicable disease, toxic substance or transmissible agent.

(10) "Reportable disease" means a disease or condition, the reporting of which enables a public health authority to take action to protect or to benefit the public health.

(11) "School" has the meaning given that term in ORS 433.235.

(12) "Specimen" means blood, sputum, urine, stool or other bodily fluids and wastes, tissues, and cultures necessary to perform required tests.

(13) "Test" means any diagnostic or investigative analyses or medical procedures that determine the presence or absence of, or exposure to, a condition of potential public health importance, or its precursor in an individual.

(14) "Toxic substance" means a substance that may cause illness, disability or death to persons who are exposed to it.

SECTION 549. ORS 431.262 is amended to read:

431.262. (1) The [*Department of Human Services*] **Oregon Health Authority** and local public health administrators shall have the power to enforce public health laws. The enforcement powers authorized by this section include, but are not limited to, the authority to:

- (a) Investigate possible violations of public health laws;
- (b) Issue subpoenas requiring testimony or the production of physical or other evidence;
- (c) Issue administrative orders to enforce compliance with public health laws;
- (d) Issue a notice of violation of a public health law and impose a civil penalty as established by rule not to exceed \$500 a day per violation;
- (e) Enter private property at any reasonable time with consent of the owner or custodian of the property to inspect, investigate, evaluate or conduct tests, or take specimens or samples for testing, as may be reasonably necessary to determine compliance with any public health law;
- (f) Enter a public place to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with the provisions of any public health law;
- (g) Seek an administrative warrant from an appropriate court authorizing the inspection, investigation, evaluation or testing, or taking of specimens or samples for testing, if denied entry to property;
- (h) Restrict access to contaminated property;
- (i) Require removal or abatement of a toxic substance on any property and prescribe the proper measures for the removal or abatement;
- (j) Maintain a civil action to enforce compliance with public health laws, including a petition to a court for an order imposing a public health measure appropriate to the public health threat presented;

(k) Refer any possible criminal violations of public health laws to a district attorney or other appropriate law enforcement official; and

(L) Request the Attorney General to assist in the enforcement of the public health laws.

(2) Any administrative actions undertaken by the state under this section shall comply with the provisions of ORS chapter 183.

(3) State and local law enforcement officials, to the extent resources are available, must assist the [Department of Human Services] **Oregon Health Authority** and local public health administrators in ensuring compliance with administrative or judicial orders issued pursuant to this section.

(4) Nothing in this section shall be construed to limit any other enforcement authority granted by law to a local public health authority or to the state.

SECTION 550. ORS 431.264 is amended to read:

431.264. (1) Unless the Governor has declared a public health emergency under ORS 433.441, the Public Health Director may, upon approval of the Governor or the designee of the Governor, take the public health actions described in subsection (2) of this section if the Public Health Director determines that:

(a)(A) A communicable disease, reportable disease, disease outbreak, epidemic or other condition of public health importance has affected more than one county;

(B) There is an immediate need for a consistent response from the state in order to adequately protect the public health;

(C) The resources of the local public health authority or authorities are likely to be quickly overwhelmed or unable to effectively manage the required response; and

(D) There is a significant risk to the public health; or

(b) A communicable disease, reportable disease, disease outbreak, epidemic or other condition of public health importance is reported in Oregon and is an issue of significant regional or national concern or is an issue for which there is significant involvement from federal authorities requiring state-federal coordination.

(2) The Public Health Director, after making the determinations required under subsection (1) of this section, may take the following public health actions:

(a) Coordinate the public health response across jurisdictions.

(b) Prescribe measures for the:

(A) Identification, assessment and control of the communicable disease or reportable disease, disease outbreak, epidemic or other condition of public health importance; and

(B) Allocation and distribution of antitoxins, serums, vaccines, immunizing agents, antibiotics, antidotes and other pharmaceutical agents, medical supplies or personal protective equipment.

(c) After consultation with appropriate medical experts, create and require the use of diagnostic and treatment guidelines and provide notice of those guidelines to health care providers, institutions and facilities.

(d) Require a person to obtain treatment and use appropriate prophylactic measures to prevent the introduction or spread of a communicable disease or reportable disease, unless:

(A) The person has a medical diagnosis for which a vaccination is contraindicated; or

(B) The person has a religious or conscientious objection to the required treatments or prophylactic measures.

(e) Notwithstanding ORS 332.075, direct a district school board to close a children's facility or school under the jurisdiction of the board. The authority granted to the Public Health Director under this paragraph supersedes the authority granted to the district school board under ORS 332.075 to the extent the authority granted to the board is inconsistent with the authority granted to the director.

(f) Issue guidelines for private businesses regarding appropriate work restrictions.

(g) Organize public information activities regarding the public health response to circumstances described in subsection (1) of this section.

(h) Adopt reporting requirements for, and provide notice of those reporting requirements to, health care providers, institutions and facilities for the purpose of obtaining information directly related to the public health threat presented.

(i) Take control of antitoxins, serums, vaccines, immunizing agents, antibiotics, antidotes and other pharmaceutical agents, medical supplies or personal protective equipment.

(3) The authority granted to the Public Health Director under this section is not intended to override the general authority provided to a local public health authority except as already permitted by law, or under the circumstances described in subsection (1) of this section.

(4) If the [*Department of Human Services*] **Oregon Health Authority** adopts temporary rules to implement subsection (2) of this section, the rules adopted are not subject to the provisions of ORS 183.335 (6)(a). The [*department*] **authority** may amend the temporary rules adopted under this subsection as often as is necessary to respond to the public health threat.

(5) If it is necessary for the [*department*] **authority** to purchase antitoxins, serums, vaccines, immunizing agents, antibiotics, antidotes or other pharmaceutical agents, medical supplies or personal protective equipment, the purchases are not subject to the provisions of ORS chapter 279A, 279B or 279C.

(6) If property is taken under the authority granted to the Public Health Director under subsection (2) of this section, the owner of the property is entitled to reasonable compensation from the state.

SECTION 551. ORS 431.270 is amended to read:

431.270. (1) The [*Department of Human Services*] **Oregon Health Authority** shall educate residents of this state about:

(a) The need for bone marrow donors;

(b) The procedures required to become registered as a potential bone marrow donor, including procedures for determining a person's tissue type; and

(c) The medical procedures a donor must undergo to donate bone marrow or other sources of blood stem cells.

(2) The [*Department of Human Services*] **Oregon Health Authority** shall make special efforts to educate and recruit citizens of Oregon with a special emphasis on minority populations to volunteer as potential bone marrow donors. Means of communication may include use of press, radio and television, and placement of educational materials in appropriate health care facilities, blood banks and state and local agencies. The [*Department of Human Services*] **Oregon Health Authority** in conjunction with the Department of Transportation shall make educational materials available at all places where driver licenses are issued or renewed.

SECTION 552. ORS 431.290 is amended to read:

431.290. (1) There is established a Spinal Cord Injury Research Board consisting of 11 members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of a member to the board is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) The members of the Spinal Cord Injury Research Board shall be citizens of this state who are well informed on the issues relating to spinal cord injuries and related disabilities. Members may include, but are not limited to:

(a) A minimum of five health professionals with clinical practice experience in each of the practice fields of neuroscience, neurology, neurosurgery, neuropharmacology and spinal cord rehabilitative medicine;

(b) A representative of the Oregon Disabilities Commission;

(c) A representative of a disabilities advocacy organization or an individual who advocates on behalf of persons with spinal cord injuries;

(d) A representative of the [*Department of Human Services*] **Oregon Health Authority**;

- (e) Members of the Legislative Assembly; and
- (f) A person with a spinal cord injury.

(5) The board shall elect one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the performance of the functions of such offices as the board determines.

(6) The board shall meet at least once every three months at a place, day and hour determined by the chairperson. The board also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(7) In accordance with applicable provisions of ORS chapter 183, the board may adopt rules necessary for the administration of the grant program and fund described in ORS 431.292 and 431.294.

SECTION 553. ORS 431.310 is amended to read:

431.310. (1) For the better protection of the public health the laboratory of the [*Department of Human Services*] **Oregon Health Authority** shall make bacteriological and other examinations of water, milk, blood, secretions or tissues required by any state, county or city institution, or officer, and may make such examinations for any licensed physician in accordance with the rules of the [*department*] **authority**.

(2) The [*department*] **authority** shall establish by rule and collect fees for tests performed in the state public health laboratory, not to exceed:

- (a) \$50 per test for tests other than newborn screening tests; and
- (b) \$30 per specimen for newborn screening tests.

(3) All money received for such tests shall be deposited in the Public Health Account to be used for expenses of the state public health laboratory.

SECTION 554. ORS 431.330 is amended to read:

431.330. (1) The Conference of Local Health Officials is created. The conference shall consist of all local health officers and public health administrators, appointed pursuant to ORS 431.418 and such other local health personnel as may be included by the rules of the conference.

(2) The Conference of Local Health Officials shall select one of its members as chairperson, another as vice chairperson and another as secretary with such powers and duties necessary to the performance of the functions of such offices as the conference shall determine. The chairperson, after consultation with the Director of [*Human Services*] **the Oregon Health Authority**, shall appoint from the conference membership an executive committee. The executive committee with the chairperson shall advise the director in the administration of ORS 431.330 to 431.350.

SECTION 555. ORS 431.335 is amended to read:

431.335. (1) The Conference of Local Health Officials shall meet at least annually at a place, day and hour determined by the executive committee and the Director of [*Human Services*] **the Oregon Health Authority**. The conference may meet specially at such other times as the director or the executive committee considers necessary.

(2) The director shall cause at least 10 days' notice of each meeting date to be given to the members. The chairperson or an authorized representative of the chairperson shall preside at all meetings of the conference.

(3) Each conference member shall receive from the local board which the conference member represents from funds available under ORS 431.510, the actual and necessary travel and other expenses incurred by the conference member in attendance at no more than two meetings of the conference per year. Additionally, subject to applicable law regulating travel and other expenses for state officers, a local health official who is a member of the executive committee of the conference or who is the chairperson shall receive from funds available to the [*Department of Human Services*] **Oregon Health Authority**, actual and necessary travel and other expenses for attendance at no more than six meetings per year of the executive committee called by the [*department*] **authority**.

SECTION 556. ORS 431.340 is amended to read:

431.340. The Conference of Local Health Officials may submit to the [*Department of Human Services*] **Oregon Health Authority** such recommendations on the rules and standards specified in ORS 431.345 and 431.350.

SECTION 557. ORS 431.345 is amended to read:

431.345. In order to establish criteria for local boards of health to qualify for such financial assistance as may be made available, the [*Department of Human Services*] **Oregon Health Authority**, upon receipt of written approval from the Conference of Local Health Officials shall adopt minimum standards governing:

(1) Education and experience for professional and technical personnel employed in local health departments, such standards to be consistent with any applicable merit system.

(2) Organization, operation and extent of activities which are required or expected of local health departments to carry out their responsibilities in implementing the public health laws of this state and the rules of the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 558. ORS 431.350 is amended to read:

431.350. Upon receipt of written approval from the Conference of Local Health Officials the [*Department of Human Services*] **Oregon Health Authority** shall adopt rules necessary for the administration of ORS 431.330 to 431.350.

SECTION 559. ORS 431.375 is amended to read:

431.375. (1) The Legislative Assembly of the State of Oregon finds that each citizen of this state is entitled to basic public health services which promote and preserve the health of the people of Oregon. To provide for basic public health services the state, in partnership with county governments, shall maintain and improve public health services through county or district administered public health programs.

(2) County governments or health districts established under ORS 431.414 are the local public health authority responsible for management of local public health services unless the county contracts with private persons or an agency to act as the local public health authority or the county relinquishes authority to the state. If authority is relinquished, the state may then contract with private persons or an agency to perform the services.

(3) All expenditure of public funds utilized to provide public health services on the local level must be approved by the local public health authority unless the county has relinquished authority to the state or an exception has been approved by the [*Department of Human Services*] **Oregon Health Authority** with the concurrence of the Conference of Local Health Officials.

(4) The [*Department of Human Services*] **Oregon Health Authority**:

(a) Shall contract for the provision of maternal and child public health services with any tribal governing council of a federally recognized Indian tribe that requests to receive funding and to deliver services under the federal Title V Maternal and Child Health Services Block Grant Program.

(b) May contract directly with any tribal governing council of a federally recognized Indian tribe for provision of public health services and programs not required under paragraph (a) of this subsection.

(5) Contracts authorized by subsection (4) of this section must specify that:

(a) Payments will be made to the tribe on a per capita or other equitable formula basis;

(b) The tribe must provide services that are comparable to the services provided by a local public health authority; and

(c) The tribe must comply with any state or federal requirements with which a local public health authority providing the same services must comply.

SECTION 560. ORS 431.380 is amended to read:

431.380. (1) From funds available to the [*Department of Human Services*] **Oregon Health Authority** for local public health purposes, regardless of the source, the [*department*] **authority** shall provide payments to the local public health authority on a per capita or other equitable formula basis to be used for public health services. Funding formulas shall be determined by the [*department*] **authority** with the concurrence of the Conference of Local Health Officials.

(2) With respect to counties that have established joint public health services with another county, either by agreement or the formation of a district board of health, distribution of funds made available under the provisions of this section shall be prorated to such counties as provided by agreement or under ORS 431.510.

SECTION 561. ORS 431.385 is amended to read:

431.385. (1) The local public health authority shall submit an annual plan to the [*Department of Human Services*] **Oregon Health Authority** for performing services pursuant to ORS 431.375 to 431.385 and 431.416. The annual plan shall be submitted no later than May 1 of each year or on a date mutually agreeable to the [*department*] **authority** and the local public health authority.

(2) If the local public health authority decides not to submit an annual plan under the provisions of ORS 431.375 to 431.385 and 431.416, the [*department*] **authority** shall become the local public health authority for that county or health district.

(3) The [*department*] **authority** shall review and approve or disapprove each plan. Variances to the local public health plan must be approved by the [*department*] **authority**. In consultation with the Conference of Local Health Officials, the [*department*] **authority** shall establish the elements of a plan and an appeals process whereby a local health authority may obtain a hearing if its plan is disapproved.

(4) Each local commission on children and families shall reference the local public health plan in the local coordinated comprehensive plan created pursuant to ORS 417.775.

SECTION 562. ORS 431.415 is amended to read:

431.415. (1) The district or county board of health is the policymaking body of the county or district in implementing the duties of local departments of health under ORS 431.416.

(2) The district or county board of health shall adopt rules necessary to carry out its policies under subsection (1) of this section. The county or district board of health shall adopt no rule or policy which is inconsistent with or less strict than any public health law or rule of the [*Department of Human Services*] **Oregon Health Authority**.

(3) With the permission of the county governing body, a county board may, and with the permission of the governing bodies of the counties involved, a district board may, adopt schedules of fees for public health services reasonably calculated not to exceed the cost of the services performed. The health department shall charge fees in accordance with such schedule or schedules adopted.

SECTION 563. ORS 431.416 is amended to read:

431.416. The local public health authority or health district shall:

(1) Administer and enforce the rules of the local public health authority or the health district and public health laws and rules of the [*Department of Human Services*] **Oregon Health Authority**.

(2) Assure activities necessary for the preservation of health or prevention of disease in the area under its jurisdiction as provided in the annual plan of the authority or district are performed. These activities shall include but not be limited to:

(a) Epidemiology and control of preventable diseases and disorders;

(b) Parent and child health services, including family planning clinics as described in ORS 435.205;

(c) Collection and reporting of health statistics;

(d) Health information and referral services; and

(e) Environmental health services.

SECTION 564. ORS 431.418 is amended to read:

431.418. (1) Each district board of health shall appoint a qualified public health administrator to supervise the activities of the district in accordance with law. Each county governing body in a county that has created a county board of health under ORS 431.412 shall appoint a qualified public health administrator to supervise the activities of the county health department in accordance with law. In making such appointment, the district or county board of health shall consider standards for

selection of administrators prescribed by the [*Department of Human Services*] **Oregon Health Authority**.

(2) When the public health administrator is a physician licensed by the Oregon Medical Board, the administrator shall serve as health officer for the district or county board of health. When the public health administrator is not a physician licensed by the Oregon Medical Board, the administrator will employ or otherwise contract for services with a health officer who shall be a licensed physician and who will perform those specific medical responsibilities requiring the services of a physician and shall be responsible to the public health administrator for the medical and paramedical aspects of the health programs.

(3) The public health administrator shall:

(a) Serve as the executive secretary of the district or county health board, act as the administrator of the district or county health department and supervise the officers and employees appointed under paragraph (b) of this subsection.

(b) Appoint with the approval of the health board, administrators, medical officers, public health nurses, environmental health specialists and such other employees as are necessary to carry out the duties and responsibilities of the office.

(c) Provide the board at appropriate intervals information concerning the activities of the county health department and submit an annual budget for the approval of the county governing body except that, in the case of the district public health administrator, the budget shall be submitted to the governing bodies of the participating counties for approval.

(d) Act as the agent of the [*Department of Human Services*] **Oregon Health Authority** in enforcing state public health laws and rules of the [*Department of Human Services*] **authority**, including such sanitary inspection of hospitals and related institutions as may be requested by the [*Department of Human Services*] **authority**.

(e) Perform such other duties as may be required by law.

(4) The public health administrator shall serve until removed by the appointing board. The public health administrator shall engage in no occupation which conflicts with official duties and shall devote sufficient time to duties as public health administrator as may be necessary to fulfill the requirements of subsection (3) of this section. However, if the board of health is not created under ORS 431.412, it may, with the approval of the Director of [*Human Services*] **the Oregon Health Authority**, require less than full-time service of the public health administrator.

(5) The public health administrator shall receive a salary fixed by the appointing board and shall be reimbursed for actual and necessary expenses incurred in the performance of duties.

SECTION 565. ORS 431.530 is amended to read:

431.530. (1) The local public health administrator may take any action which the [*Department of Human Services*] **Oregon Health Authority** or its director could have taken, if an emergency endangering the public health occurs within the jurisdiction of any local public health administrator and:

(a) The circumstances of the emergency are such that the [*department*] **authority** or its director cannot take action in time to meet the emergency; and

(b) Delay in taking action to meet the emergency will increase the hazard to public health.

(2) Any local public health administrator who acts under subsection (1) of this section shall report the facts constituting the emergency and any action taken under the authority granted by subsection (1) of this section to the Director of [*Human Services*] **the Oregon Health Authority** by the fastest possible means.

SECTION 566. ORS 431.550 is amended to read:

431.550. Nothing in ORS 431.412, 431.418 and this section shall be construed to limit the authority of the [*Department of Human Services*] **Oregon Health Authority** to require facts and statistics from local public health administrators under its general supervisory power over all matters relating to the preservation of life and health of the people of the state.

SECTION 567. ORS 431.607 is amended to read:

431.607. In cooperation with representatives of the emergency medical services professions, the [Department of Human Services] **Oregon Health Authority** shall develop a comprehensive emergency medical services and trauma system. The [department] **authority** shall report progress on the system to the Legislative Assembly.

SECTION 568. ORS 431.609 is amended to read:

431.609. (1) With the advice of the State Trauma Advisory Board, the [Department of Human Services] **Oregon Health Authority** shall:

- (a) Develop and monitor a statewide trauma system; and
 - (b) Designate within the state, trauma areas consistent with local resources, geography and current patient referral patterns.
- (2) Each trauma area shall have:
- (a) Central medical control for all field care and transportation consistent with geographic and current communications capability.
 - (b) The development of triage protocols.
 - (c) One or more hospitals categorized according to trauma care capabilities using standards adopted by the [department] **authority** by rule. Such rules shall be modeled after the American College of Surgeons Committee on Trauma standards.
 - (d) The establishment of area trauma advisory boards to develop trauma system plans for each trauma area.
- (3) On and after July 1, 1986, the [department] **authority** may designate trauma system hospitals in accordance with area trauma advisory board plans which meet state objectives and standards.
- (4) Trauma system plans shall be implemented by June 30, 1987, in Health Systems Area I, and June 30, 1988, in Health Systems Areas II and III.

SECTION 569. ORS 431.611 is amended to read:

431.611. (1) Prior to approval and implementation of area trauma plans submitted to the [Department of Human Services] **Oregon Health Authority** by area trauma advisory boards, the [department] **authority** shall adopt rules pursuant to ORS chapter 183 which specify state trauma objectives and standards, hospital categorization criteria and criteria and procedures to be utilized in designating trauma system hospitals.

(2) For approved area trauma plans recommending designation of trauma system hospitals, the [department] **authority** rules shall provide for:

- (a) The transport of a member of a health maintenance organization, or other managed health care system, as defined by rule, to a hospital that contracts with the health maintenance organization when central medical control determines that the condition of the member permits such transport; and
- (b) The development and utilization of protocols between designated trauma hospitals and health maintenance organizations, or other managed health care systems, as defined by rule, including notification of admission of a member to a designated trauma hospital within 48 hours of admission, and coordinated discharge planning between a designated trauma hospital and a hospital that contracts with a health maintenance organization to facilitate transfer of the member when the medical condition of the member permits.

SECTION 570. ORS 431.613 is amended to read:

431.613. (1) Area trauma advisory boards shall meet as often as necessary to identify specific trauma area needs and problems and propose to the [Department of Human Services] **Oregon Health Authority** area trauma system plans and changes that meet state standards and objectives. The [department] **authority** acting with the advice of the State Trauma Advisory Board will have the authority to implement these plans.

(2) In concurrence with the Governor, the [department] **authority** shall select members for each area from lists submitted by local associations of emergency medical technicians, emergency nurses, emergency physicians, surgeons, hospital administrators, emergency medical services agencies and citizens at large. Members shall be broadly representative of the trauma area as a whole and shall consist of at least 15 members per area trauma advisory board, including:

- (a) Three surgeons;
- (b) Two physicians serving as emergency physicians;
- (c) Two hospital administrators from different hospitals;
- (d) Two nurses serving as emergency nurses;
- (e) Two emergency medical technicians serving different emergency medical services;
- (f) Two representatives of the public at large selected from among those submitting letters of application in response to public notice by the *[department]* **authority**. Public members shall not have an economic interest in any decision of the health care service areas;
- (g) One representative of any bordering state which is included within the patient referral area;
- (h) One anesthesiologist; and
- (i) One ambulance service owner or operator or both.

SECTION 571. ORS 431.619 is amended to read:

431.619. The *[Department of Human Services]* **Oregon Health Authority** shall continuously identify the causes of trauma in Oregon, and propose programs of prevention thereof for consideration by the Legislative Assembly or others.

SECTION 572. ORS 431.623 is amended to read:

431.623. (1) The Emergency Medical Services and Trauma Systems Program is created within the *[Department of Human Services]* **Oregon Health Authority** for the purpose of administering and regulating ambulances, training and certifying emergency medical technicians, establishing and maintaining emergency medical systems including trauma systems and obtaining appropriate data from the Oregon Injury Registry as necessary for trauma reimbursement, system quality assurance and assuring cost efficiency.

(2) For purposes of ORS 431.607 to 431.619 and ORS chapter 682, the duties vested in the *[department]* **authority** shall be performed by the Emergency Medical Services and Trauma Systems Program.

(3) The program shall be administered by a director.

(4) With moneys transferred to the program by ORS 442.625, the program shall apply those moneys to:

- (a) Developing state and regional standards of care;
- (b) Developing a statewide educational curriculum to teach standards of care;
- (c) Implementing quality improvement programs;
- (d) Creating a statewide data system for prehospital care; and
- (e) Providing ancillary services to enhance Oregon's emergency medical service system.

SECTION 573. ORS 431.627 is amended to read:

431.627. (1) In addition to and not in lieu of ORS 431.607 to 431.617, the *[Department of Human Services]* **Oregon Health Authority** shall designate trauma centers in areas that are within the jurisdiction of trauma advisory boards other than in the area within the jurisdiction of area trauma advisory board 1.

(2) The *[department]* **authority** shall enter into contracts with designated trauma centers and monitor and assure quality of care and appropriate costs for trauma patients meeting trauma system entry criteria.

(3) All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the *[department]* **authority**, the State Trauma Advisory Board or an area trauma advisory board in connection with obtaining the data necessary to perform patient care quality assurance functions shall be confidential pursuant to ORS 192.501 to 192.505.

(4)(a) All data received or compiled by the State Trauma Advisory Board or any area trauma advisory board in conjunction with *[department]* **authority** monitoring and assuring quality of trauma patient care shall be confidential and privileged, nondiscoverable and inadmissible in any proceeding. No person serving on or communicating information to the State Trauma Advisory Board or an area trauma advisory board shall be examined as to any such communications or to the findings or recommendations of such board. A person serving on or communicating information to the State Trauma Advisory Board or an area trauma advisory board shall not be subject to an

action for civil damages for actions taken or statements made in good faith. Nothing in this section affects the admissibility in evidence of a party's medical records not otherwise confidential or privileged dealing with the party's medical care. The confidentiality provisions of ORS 41.675 and 41.685 shall also apply to the monitoring and quality assurance activities of the State Trauma Advisory Board, area trauma advisory boards and the [department] **authority**.

(b) As used in this section, "data" includes but is not limited to written reports, notes, records and recommendations.

(5) Final reports by the [department] **authority**, the State Trauma Advisory Board and area trauma advisory boards shall be available to the public.

(6) The [department] **authority** shall publish a biennial report of the Emergency Medical Services and Trauma Systems Program and trauma systems activities.

SECTION 574. ORS 431.633 is amended to read:

431.633. (1) Designated trauma centers and providers, physical rehabilitation centers, alcohol and drug rehabilitation centers and ambulances shall develop a monthly log of all unsponsored, inadequately insured trauma system patients determined by the hospital to have an injury severity score greater than or equal to 13, and submit monthly to the Emergency Medical Services and Trauma Systems Program the true costs and unpaid balance for the care of these patients.

(2) No reimbursement for these patients shall occur until:

(a) All information required by the Emergency Medical Services and Trauma Systems Program rules is submitted to the Oregon Injury Registry; and

(b) The Emergency Medical Services and Trauma Systems Program confirms that the injury severity score, as defined by the [Department of Human Services] **Oregon Health Authority** by rule, is greater than or equal to 13.

(3) The Emergency Medical Services and Trauma Systems Program shall cause providers to be reimbursed in the following decreasing order of priority:

- (a) Designated trauma centers and providers;
- (b) Physical rehabilitation centers;
- (c) Alcohol and drug rehabilitation centers; and
- (d) Ambulances.

(4) Subject to the availability of funds, the Emergency Medical Services and Trauma Systems Program shall cause the designated trauma centers and providers to be paid first in full. Subsequent providers shall be paid from the balance remaining according to priority.

(5) Any matching funds, available pursuant to the federal Trauma Care Systems and Development Act of 1990 (H.R. 1602), that are available for purposes of the Emergency Medical Services and Trauma Systems Program may be used for related studies and projects and reimbursement for uncompensated care.

SECTION 575. ORS 431.671 is amended to read:

431.671. (1) Subject to available funding from gifts, grants or donations, the Emergency Medical Services for Children Program is established in the [Department of Human Services] **Oregon Health Authority**. The Emergency Medical Services for Children Program shall operate in cooperation with the Emergency Medical Services and Trauma Systems Program to promote the delivery of emergency medical and trauma services to the children of Oregon.

(2) The [Department of Human Services] **Oregon Health Authority** shall:

(a) Employ or contract with professional, technical, research and clerical staff as required to implement this section.

(b) Provide technical assistance to the State Trauma Advisory Board on the integration of an emergency medical services for children program into the statewide emergency medical services and trauma system.

(c) Provide advice and technical assistance to area trauma advisory boards on the integration of an emergency medical services for children program into area trauma system plans.

(d) Establish an Emergency Medical Services for Children Advisory Committee.

(e) Establish guidelines for:

(A) The approval of emergency and critical care medical service facilities for pediatric care, and for the designation of specialized regional pediatric critical care centers and pediatric trauma care centers.

(B) Referring children to appropriate emergency or critical care medical facilities.

(C) Necessary prehospital and other pediatric emergency and critical care medical service equipment.

(D) Developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate level of care, including critical care, trauma care or pediatric subspecialty care.

(E) Protocols for prehospital and hospital facilities encompassing all levels of pediatric emergency services, pediatric critical care and pediatric trauma care.

(F) Rehabilitation services for critically ill or injured children.

(G) An interfacility transfer system for critically ill or injured children.

(H) Initial and continuing professional education programs for emergency medical services personnel, including training in the emergency care of infants and children.

(I) A public education program concerning the Emergency Medical Services for Children Program including information on emergency access telephone numbers.

(J) The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency and critical care medical service facilities for the purpose of quality improvement by such facilities, subject to relevant confidentiality requirements.

(K) The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency and critical care services.

(L) Coordination and cooperation between the Emergency Medical Services for Children Program and other public and private organizations interested or involved in emergency and critical care for children.

SECTION 576. ORS 431.705 is amended to read:

431.705. As used in ORS 431.705 to 431.760, unless the context requires otherwise:

(1) "Affected territory" means an area that is the subject of a proceedings under ORS 431.705 to 431.760 where there is a danger to public health or an alleged danger to public health.

(2) "Boundary commission" means a local government boundary commission created under ORS 199.410 to 199.430, 199.435 to 199.464, 199.480 to 199.505 and 199.510.

(3) "Commission" means the Environmental Quality Commission.

(4) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:

(a) Impure or inadequate domestic water.

(b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste.

(c) Inadequate improvements for drainage of surface water and other fluid substances.

[(5) "Department" means the Department of Human Services.]

[(6) "Director" means the Director of Human Services.]

[(7)] (5) "District" means any one of the following:

(a) A metropolitan service district formed under ORS chapter 268.

(b) A county service district formed under ORS chapter 451.

(c) A sanitary district formed under ORS 450.005 to 450.245.

(d) A sanitary authority, water authority or joint water and sanitary authority formed under ORS 450.600 to 450.989.

(e) A domestic water supply district formed under ORS chapter 264.

[(8)] (6) "Requesting body" means the county court, or local or district board of health that makes a request under ORS 431.715.

[9] (7) "Service facilities" means water or sewer installations or works.

SECTION 577. ORS 431.710 is amended to read:

431.710. (1) ORS 431.705 to 431.760 shall not apply if the affected territory could be subject to an annexation proceeding under ORS 222.840 to 222.915.

(2) If the [Department of Human Services] **Oregon Health Authority**, in accordance with ORS 431.705 to 431.760, finds that a danger to public health exists within the affected territory and that such danger could be removed or alleviated by the construction, maintenance and operation of service facilities, the [department] **authority** shall initiate proceedings for the formation of or annexation to a district to serve the affected territory. If the affected territory is located within a district that has the authority to provide the service facilities, the [department] **authority** shall order the district to provide service facilities in the affected territory.

SECTION 578. ORS 431.715 is amended to read:

431.715. (1) The county court or the local or district board of health having jurisdiction over territory where it believes conditions dangerous to the public health exist shall adopt a resolution requesting the [Department of Human Services] **Oregon Health Authority** to initiate proceedings for the formation of a district or annexation of territory to, or delivery of appropriate water or sewer services by, an existing district without vote or consent in the affected territory. The resolution shall:

(a) Describe the boundaries of the affected territory;

(b) Describe the conditions alleged to be causing a danger to public health;

(c) Request the [department] **authority** to ascertain whether conditions dangerous to public health exist in the affected territory and whether such conditions could be removed or alleviated by the provision of service facilities; and either

(d) Recommend a district that the affected territory could be included in or annexed to for the purpose of providing the requested service facilities; or

(e) Recommend that an existing district provide service facilities in the affected territory.

(2) The requesting body shall cause a certified copy of the resolution, together with the time schedule and preliminary plans and specifications, prepared in accordance with subsection (3) of this section, to be forwarded to the [department] **authority**.

(3) The requesting body shall cause a study to be made and preliminary plans and specifications prepared for the service facilities considered necessary to remove or alleviate the conditions causing a danger to public health. The requesting body shall prepare a schedule setting out the steps necessary to put the facilities into operation and the time required for each step in implementation of the plans.

(4) If the preliminary plans involve facilities that are subject to the jurisdiction of the Environmental Quality Commission, a copy of the documents submitted to the [department] **authority** under subsection (2) of this section shall be submitted to the commission for review, in accordance with ORS 431.725, of those facilities that are subject to its jurisdiction. No order or findings shall be adopted under ORS 431.735 or 431.756 until the plans of the requesting body for such facilities, if any, have been approved by the commission.

SECTION 579. ORS 431.720 is amended to read:

431.720. (1) Upon receipt of the documents submitted under ORS 431.715 (4), the Environmental Quality Commission shall review them to determine whether the conditions dangerous to public health within the affected territory could be removed or alleviated by the provision of service facilities that are subject to the jurisdiction of the commission.

(2) If the commission considers such proposed facilities and the time schedule for installation of such facilities adequate to remove or alleviate the dangerous conditions, it shall approve the part of the plans that are subject to its jurisdiction and certify its approval to the [Department of Human Services] **Oregon Health Authority**.

(3) If the commission considers the proposed facilities or time schedule inadequate, it shall disapprove the part of the plans that are subject to its jurisdiction and certify its disapproval to the [department] **authority**. The commission shall also inform the requesting body of its approval or

disapproval and, in case of disapproval, of the particular matters causing the disapproval. The requesting body may then submit additional or revised plans.

SECTION 580. ORS 431.725 is amended to read:

431.725. (1) Upon receipt of the certified copy of a resolution adopted under ORS 431.715, the [Department of Human Services] **Oregon Health Authority** shall contact the requesting body within 30 days of receipt of the request and schedule the review and investigation of conditions in the affected territory. The [department] **authority** shall review and investigate conditions in the affected territory in accordance with the agreed upon schedule unless both parties agree to an extension. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order setting a time and place for a hearing on the resolution. The hearing shall be held within the affected territory, or at a place near the territory if there is no suitable place within the territory at which to hold the hearing, not less than 30 or more than 50 days after the date of the order.

(2) Upon issuance of an order for a hearing, the [department] **authority** shall immediately give notice of the time and place of the hearing on the resolution by publishing the order and resolution in a newspaper of general circulation within the territory once each week for two successive weeks and by posting copies of the order in four public places within the territory prior to the hearing.

SECTION 581. ORS 431.730 is amended to read:

431.730. (1) At the hearing on the resolution, any interested person shall be given a reasonable opportunity to be heard or to present written statements. The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory and whether such conditions could be removed or alleviated by the provision of service facilities. Hearings under this section shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. It shall be conducted in accordance with the provisions of ORS chapter 183. The [Department of Human Services] **Oregon Health Authority** shall publish a notice of the issuance of said findings and recommendations in the newspaper utilized for the notice of hearing under ORS 431.725 (2) advising of the opportunity for presentation of a petition under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section, any person who may be affected by the findings, or the affected district, may petition the Director of [Human Services] **the Oregon Health Authority** according to rules of the [department] **authority** to present written or oral arguments relative to the proposal. If a petition is received, the director may set a time and place for receipt of argument.

SECTION 582. ORS 431.735 is amended to read:

431.735. (1) If the Director of [Human Services] **the Oregon Health Authority** after investigation finds that no danger to public health exists because of conditions within the affected territory, or that such a danger does exist but the conditions causing it could not be removed or alleviated by the provision of service facilities, the director shall issue an order terminating the proceedings under ORS 431.705 to 431.760 with reference to the affected territory.

(2) If the director finds, after investigation and the hearing required by ORS 431.725, that a danger to public health exists because of conditions within the territory, and that such conditions could be removed or alleviated by the provisions of service facilities in accordance with the plans and specifications and the time schedule proposed, the director shall enter findings in an order, directed to the officers described by ORS 431.740, setting out the service facilities to be provided.

(3) If the director determines that a danger to public health exists because of conditions within only part of the affected territory, or that such conditions could be removed or alleviated in only part of the affected territory by the provision of service facilities, the director may, subject to conditions stated in ORS 431.705 to 431.760, reduce the boundaries of the affected territory to that part which presents a danger or in which the conditions could be removed or alleviated if the area to be excluded would not be surrounded by the territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the danger to public health existing within the territory remaining to be annexed. The findings shall describe the boundaries of the area as reduced by the director.

(4) In determining whether to exclude any area the director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the area remaining to be annexed and whether the exclusion would result in an illogical boundary for the provision of services.

(5) The requesting body or the boundary commission shall, when requested, aid in the determinations made under subsections (3) and (4) of this section and, if necessary, cause a study to be made.

SECTION 583. ORS 431.740 is amended to read:

431.740. (1) If a boundary commission has jurisdiction of the affected territory, the Director of [Human Services] **the Oregon Health Authority** shall file the findings and order with such boundary commission. If the affected territory is not within the jurisdiction of a boundary commission, the director shall file the findings and order with the county court of the county having jurisdiction of the territory.

(2) The [Department of Human Services] **Oregon Health Authority** and the Environmental Quality Commission shall use their applicable powers of enforcement to insure that the service facilities are constructed or installed in conformance with the approved plans and schedules.

SECTION 584. ORS 431.745 is amended to read:

431.745. (1) At any time after the adoption of a resolution under ORS 431.715, a petition, signed by not less than 51 percent of the electors registered in the affected territory, may be filed with the [Department of Human Services] **Oregon Health Authority**. The petition shall suggest an alternative plan to the proposed formation or annexation for removal or alleviation of the conditions dangerous to public health. The petition shall state the intent of the residents to seek annexation to an existing city or special district authorized by law to provide service facilities necessary to remove or alleviate the dangerous conditions. The petition shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities and an estimate of the time required to construct such facilities and place them in operation.

(2) Upon receipt of the petition, the [department] **authority** shall immediately forward a copy of the petition to the Environmental Quality Commission, if the plan accompanying the petition involves facilities that are subject to the jurisdiction of the commission. The [department] **authority** also shall forward a copy of the petition to the requesting body and to the county court or boundary commission where the [department] **authority** filed its findings under ORS 431.740 and direct the county court or boundary commission to stay the proceedings pending the review permitted under this section and ORS 431.750.

SECTION 585. ORS 431.750 is amended to read:

431.750. (1) If the alternative plan submitted under ORS 431.745 (1) involves service facilities that are subject to the jurisdiction of the commission, the alternative plan shall be submitted to and reviewed by the Environmental Quality Commission and shall be approved or rejected by the commission within 30 days from the date of filing with the [Department of Human Services] **Oregon Health Authority**. In reviewing the alternative plan, the commission shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health. If the commission determines that the original plan provides the better and most expeditious method of removing or alleviating the dangerous conditions, it shall disapprove the alternative plan and inform the [department] **authority** of its decision. The [department] **authority** shall order the proceedings on the finding filed under ORS 431.740 to resume.

(2) If the commission finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners shall be granted six months within which to present to the commission information showing:

(a) That the affected territory has annexed to a city or special district authorized by law to provide the service facilities necessary to remove or alleviate the dangerous conditions, and that the financing of the extension of such facilities to the territory has been assured.

(b) Detailed plans and specifications for the construction of such facilities.

(c) A time schedule for the construction of such facilities.

(d) That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the formation or annexation proposed by the original plans.

(3) The commission shall review the plan presented to it by the petitioners under subsection (2) of this section and shall promptly certify to the [department] **authority** whether the requirements of subsection (2) of this section have been met. If the requirements have been met, the [department] **authority** shall certify the alternative plan to the county court or boundary commission having jurisdiction and direct it to proceed in accordance with the alternative plan and in lieu of the plans filed under ORS 431.740. If the requirements of subsection (2) of this section are not met by the petitioners, the [department] **authority** shall certify that fact to the county court or boundary commission having jurisdiction and direct it to continue the proceedings on the plans filed under ORS 431.740.

SECTION 586. ORS 431.760 is amended to read:

431.760. (1) A person who owns property or resides within affected territory that is subject to proceedings under the provisions of ORS 431.705 to 431.760 shall not participate in an official capacity in any investigation, hearing or recommendation relating to such proceedings. If the Director of [Human Services] **the Oregon Health Authority** is such a person, the director shall so inform the Governor, who shall appoint another person to fulfill the duties of the director in any investigation, hearing or recommendation relating to the such proceeding.

(2) Subsection (1) of this section does not excuse a member of a county court from voting on the order required by ORS 198.792 (2) or 451.445 (1).

SECTION 587. Section 2, chapter 460, Oregon Laws 2007, is amended to read:

Sec. 2. (1) The [Department of Human Services] **Oregon Health Authority** shall develop, by the year 2009, a strategic plan to start to slow the rate of diabetes caused by obesity and other environmental factors by the year 2010.

(2) The [department] **authority** shall collaborate with the American Diabetes Association, the Oregon Diabetes Coalition and others such as:

(a) Health care professionals and researchers specializing in diabetes and obesity prevention, treatment or research;

(b) Diabetes educators;

(c) Representatives of medical schools or schools of public health;

(d) High school and post-secondary institution health educators;

(e) Representatives from geographic areas and other population groups at higher risk of diabetes;

(f) Representatives of community-based organizations involved in providing education about or awareness of diabetes; and

(g) Other individuals the [department] **authority** determines are necessary.

(3) The plan developed by the [department] **authority** shall include but not be limited to:

(a) Identification of environmental factors that encourage or support physical activity and healthy eating habits;

(b) Identification of preventative strategies that are effective and culturally competent and that meet the populations most at risk for developing diabetes;

(c) Recommendations for evidence-based screening;

(d) Recommendations for redesigning and financing primary care practices that would facilitate adoption of the Chronic Care Model for screening for diabetes, support for patient self-management and regular reporting of preventative clinical screening results;

(e) Identification of actions to be taken to reduce the morbidity and mortality from diabetes by the year 2015 and a time frame for taking those actions; and

(f) Recommendations to the Seventy-fifth Legislative Assembly on statutory changes and funding needed to achieve the [department's] **authority's** plan.

SECTION 588. ORS 431.825 is amended to read:

431.825. The [Department of Human Services] **Oregon Health Authority** shall provide to the counties of this state pamphlets described in ORS 106.081. The [department] **authority** may produce such pamphlets with moneys available for the purpose or may accept a gift of such pamphlets from any public or private source if the content is acceptable to the [department] **authority**.

SECTION 589. ORS 431.827 is amended to read:

431.827. The [Department of Human Services] **Oregon Health Authority** shall establish and implement appropriate education, prevention and outreach activities in communities that traditionally practice female circumcision, excision or infibulation for the purpose of informing:

- (1) Those communities of the health risks and emotional trauma inflicted by the practices;
- (2) Those communities and the medical community as to the existence and ramifications of ORS 163.207; and
- (3) Those communities that the practices constitute physical injuries to a child for purposes of ORS 419B.005.

SECTION 590. ORS 431.830 is amended to read:

431.830. (1) The [Department of Human Services] **Oregon Health Authority** shall establish an acquired immune deficiency syndrome program:

- (a) To provide education and prevention services to its clients; and
 - (b) To provide education and prevention services to the public.
- (2) Programs authorized by this section may be operated by the [department] **authority** directly or under contract with public and private agencies.

SECTION 591. ORS 431.831 is amended to read:

431.831. (1) The [Department of Human Services] **Oregon Health Authority** shall develop a program to reimburse smoking cessation program providers for services provided to residents of this state who are not insured for smoking cessation costs.

(2) The [department] **authority** shall adopt rules for the program established under subsection (1) of this section that include but are not limited to criteria for provider and participant eligibility and other program specifications. The rules shall establish a maximum reimbursement limit for each participant.

(3) Costs for smoking cessation programs funded under subsection (1) of this section are eligible for reimbursement from funds received by the State of Oregon from tobacco products manufacturers under the Master Settlement Agreement of 1998.

SECTION 592. ORS 431.832 is amended to read:

431.832. (1) There is established in the General Fund the Tobacco Use Reduction Account.

(2) Amounts credited to the Tobacco Use Reduction Account are continuously appropriated to the [Department of Human Services] **Oregon Health Authority** for the funding of prevention and education programs designed to reduce cigarette and tobacco use.

SECTION 593. ORS 431.834 is amended to read:

431.834. The [Department of Human Services] **Oregon Health Authority** shall develop and adopt rules for awarding grants to programs for educating the public on the risk of tobacco use, including but not limited to:

- (1) Educating children on the health hazards and consequences of tobacco use; and
- (2) Promoting enrollment in smoking cessation programs and programs that prevent smoking-related diseases including cancer and other diseases of the heart, lungs and mouth.

SECTION 594. ORS 431.836 is amended to read:

431.836. During each biennium, the [Department of Human Services] **Oregon Health Authority** shall prepare a report regarding the awarding of grants from the Tobacco Use Reduction Account and the formation of public-private partnerships in connection with the receipt of funds from the account. The [department] **authority** shall present the report to the Governor and to those committees of the Legislative Assembly to which matters of public health are assigned.

SECTION 595. ORS 431.853 is amended to read:

431.853. (1) The [Department of Human Services] **Oregon Health Authority** shall:

(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of Oregon wholesalers and retailers of tobacco products to insure compliance with Oregon laws designed to discourage the use of tobacco by minors including ORS 163.575, 163.580, 167.400, 167.402 and 431.840; and

(b) Submit a report describing:

(A) The activities carried out to enforce the laws listed in paragraph (a) of this subsection during the previous fiscal year;

(B) The extent of success achieved in reducing the availability of tobacco products to minors; and

(C) The strategies to be utilized for enforcing the laws listed in paragraph (a) of this subsection during the year following the report.

(2) The [Department of Human Services] **Oregon Health Authority** shall adopt rules concerning random inspections of places that sell tobacco products consistent with section 1921, Public Law 102-321, 1992. The rules shall provide that inspections may take place:

(a) Only in areas open to the public;

(b) Only during hours that tobacco products are sold or distributed; and

(c) No more frequently than once a month in any single establishment unless a compliance problem exists or is suspected.

SECTION 596. ORS 431.890 is amended to read:

431.890. (1) The Poison Prevention Task Force is created in the Poison Center of the Oregon Health and Science University and consists of five members as follows:

(a) The Medical Director of the Oregon Poison Center or designee, who shall serve as chairperson.

(b) The Director of [Human Services] **the Oregon Health Authority** or a designee.

(c) A pediatrician licensed under ORS chapter 677, appointed by the Governor.

(d) A chemist from an academic institution, appointed by the Governor.

(e) A representative of a manufacturer of toxic household products, appointed by the Governor.

(2) Each member shall serve without compensation.

(3) The task force shall meet as considered necessary by the chairperson or on the call of three members of the task force.

(4) The task force shall meet for the purposes of reviewing, granting or denying requests for exemptions from and extensions of the requirements of ORS 431.870 to 431.915.

(5) The task force shall obtain and evaluate statewide poisoning incidence and severity data over a period of every two years for the purpose of making recommendations for the addition or deletion of products to ORS 431.885.

SECTION 597. ORS 431.915 is amended to read:

431.915. (1) Any person who violates any provision of ORS 431.870 to 431.915 shall be liable for a civil penalty not to exceed \$5,000 for each day of violation, which shall be assessed and recovered in a civil action brought by the [Department of Human Services] **Oregon Health Authority**.

(2) All civil penalties collected pursuant to subsection (1) of this section shall be deposited in the General Fund.

SECTION 598. ORS 431.920 is amended to read:

431.920. The [Department of Human Services] **Oregon Health Authority** shall:

(1) Develop accreditation programs for training providers;

(2) Prescribe the requirements for and the manner of testing the competency of license applicants for the protection of the public and as required by federal law;

(3) Prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the agency may refuse to issue or renew or may suspend or revoke a certification;

(4) Develop and conduct programs to screen blood lead levels, to identify hazards and to educate the public, including parents, residential dwelling owners and child care facility operators, about the

dangers of lead-based paint hazards and of appropriate precautions that should be taken to reduce the possibility of childhood lead poisoning; and

(5) Impose fees to the extent necessary to pay the costs of the following:

- (a) Certification of training curriculums, up to \$1,500;
- (b) Annual renewal of training providers and curriculums, up to \$500;
- (c) Certification of trainers, up to \$500;
- (d) Annual renewal of trainer's certification, up to \$250; and
- (e) Certification test, up to \$85.

SECTION 599. ORS 431.940 is amended to read:

431.940. (1) The [Department of Human Services] **Oregon Health Authority** shall adopt by rule standards and a system of registration for tanning devices. Any entity doing business in this state as a tanning facility shall register the tanning devices with the [department] **authority** in a manner prescribed by rule.

(2) The registration shall include payment of an annual registration fee, not to exceed \$100 per tanning device, prescribed by rule in an amount sufficient to cover the costs of administering the regulatory program.

(3) The [department] **authority** may conduct inspections of tanning facilities to ensure compliance with ORS 431.925 to 431.955.

SECTION 600. ORS 431.945 is amended to read:

431.945. (1) A tanning facility shall give each customer a written statement warning that:

(a) Not wearing the protective eye wear provided to each customer by the tanning facility may cause damage to the eyes.

(b) Overexposure to the tanning process causes burns.

(c) Repeated exposure to the tanning process may cause skin cancer or premature aging of the skin, or both.

(d) Abnormal skin sensitivity or burning may result from the tanning process if the customer is also consuming or using certain:

(A) Foods.

(B) Cosmetics.

(C) Medications such as tranquilizers, antibiotics, diuretics, high blood pressure medication, antineoplastics or birth control pills.

(e) Any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device.

(2) In addition to giving customers the written statement required by subsection (1) of this section, the tanning facility shall post a warning sign in any area where a tanning device is used. The [Department of Human Services] **Oregon Health Authority** shall adopt by rule the language for the warning sign.

SECTION 601. ORS 431.950 is amended to read:

431.950. The [Department of Human Services] **Oregon Health Authority** may impose a civil penalty in an amount not to exceed \$500 for a violation of ORS 431.925 to 431.955 or rules of the [department] **authority** adopted pursuant to ORS 431.925 to 431.955. Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

SECTION 602. ORS 431.955 is amended to read:

431.955. Except as otherwise provided by law, all fees and other moneys received by the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 431.925 to 431.955 shall be paid into the State Treasury and placed to the credit of the Public Health Account and are continuously appropriated to the [department] **authority** for the purposes of carrying out the provisions of ORS 431.925 to 431.955. If moneys received under ORS 431.925 to 431.955 are in excess of moneys required to administer the program authorized by ORS 431.925 to 431.955, the moneys may be used by the [department] **authority** to meet expenses of other programs administered by the [department] **authority** if an appropriate expenditure increase is approved by the Emergency Board.

SECTION 603. ORS 431.990 is amended to read:

431.990. Unless otherwise specifically provided by any other statute, failure to obey any rules relating to public health of the [*Department of Human Services*] **Oregon Health Authority** or failure to obey any lawful written order relating to public health issued by the Director of [*Human Services*] **the Oregon Health Authority** or any district or county public health administrator is a Class A misdemeanor.

SECTION 604. ORS 432.005, as amended by section 16, chapter 99, Oregon Laws 2007, is amended to read:

432.005. As used in this chapter, unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[(1)] (2) **“Dead body”** means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death occurred.

[(2)] *“Department” means the Department of Human Services.*

(3) **“Director”** means the Director of [*Human Services.*] **the Oregon Health Authority.**

(4) **“Divorce”** means dissolution of a marriage.

(5) **“Fetal death”** means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(6) **“File”** means the presentation and acceptance of a vital record or vital report provided for in this chapter by the Center for Health Statistics.

(7) **“Final disposition”** means the burial, interment, cremation, removal from the state or other authorized disposition of a dead body or fetus, except that when removal from the state is conducted by the holder of a certificate of removal registration issued under ORS 692.270, the final disposition may not be considered complete until the certificate of death is filed.

(8) **“Induced termination of pregnancy”** means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and that does not result in a live birth.

(9) **“Institution”** means any establishment, public or private, that provides inpatient or outpatient medical, surgical or diagnostic care or treatment or nursing, custodial or domiciliary care, or to which persons are committed by law.

(10) **“Live birth”** means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, that, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(11) **“Person acting as a funeral service practitioner”** means:

(a) A person other than a funeral service practitioner licensed under ORS 692.045, including but not limited to a relative, friend or other interested party, who performs the duties of a funeral service practitioner without payment; or

(b) A funeral service practitioner who files death certificates in another state if the funeral service practitioner is employed by a funeral establishment licensed in another state and registered with the State Mortuary and Cemetery Board under ORS 692.270.

(12) **“Physician”** means a person authorized or licensed under the laws of this state to practice medicine, osteopathy, chiropractic or naturopathic medicine.

(13) **“Registration”** means the process by which vital records and vital reports are completed, filed and incorporated into the official records of the Center for Health Statistics.

(14) **“State registrar”** means the State Registrar of the Center for Health Statistics.

(15) **“System of vital statistics”** means the registration, collection, preservation, amendment and certification of vital records and vital reports; the collection of other reports required by this chapter, and activities related thereto including the tabulation, analysis, dissemination and publication of vital statistics and training in the use of health data.

(16) "Vital records" means certificates or reports of birth, death, marriage, declaration of domestic partnership, dissolution of marriage or domestic partnership and data related thereto.

(17) "Vital reports" means reports of fetal death, induced termination of pregnancy, suicide attempts by persons under 18 years of age and survey and questionnaire documents and data related thereto.

(18) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, declaration of domestic partnership, dissolution of marriage, dissolution of domestic partnership, suicide attempts by persons under 18 years of age and related reports.

SECTION 605. ORS 432.010 is amended to read:

432.010. (1) The [*Department of Human Services*] **Oregon Health Authority** shall establish the Center for Health Statistics, which shall install, maintain and operate the system of vital statistics throughout this state in cooperation with appropriate units of local government. The Center for Health Statistics shall be responsible for the proper administration of the system of vital statistics and for the preservation and security of its official records.

(2) In order to promote and maintain nationwide uniformity in the system of vital statistics, the State Registrar of the Center for Health Statistics may refer to the 1992 federal revision of the Model State Vital Statistics Act and Regulations for recommendations regarding the forms of certificates and reports required by this chapter.

(3) Each certificate, report and other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the date of filing.

(5) Information required in certificates, forms, records or reports authorized by this chapter may be filed, verified, registered and stored by photographic, electronic or other means as prescribed by the state registrar.

SECTION 606. ORS 432.015 is amended to read:

432.015. The State Registrar of the Center for Health Statistics, under the supervision of the Director of [*Human Services*] **the Oregon Health Authority**, in compliance with ORS chapter 183, shall adopt rules necessary to the installation and efficient performance of an adequate system of vital and public health statistics including rules for the return of evidence affecting delayed certificates, or affecting alteration of a certificate, after the certificate has been filed with the state registrar.

SECTION 607. ORS 432.020 is amended to read:

432.020. The Director of [*Human Services*] **the Oregon Health Authority** shall appoint the State Registrar of the Center for Health Statistics who shall qualify in accordance with standards of education and experience as the director shall determine.

SECTION 608. ORS 432.025 is amended to read:

432.025. The State Registrar of the Center for Health Statistics, with the approval of the Director of [*Human Services*] **the Oregon Health Authority**, may appoint, when necessary, assistant state registrars who shall be assistants to the state registrar.

SECTION 609. ORS 432.030 is amended to read:

432.030. (1) The State Registrar of the Center for Health Statistics shall:

(a) Under the supervision of the Director of [*Human Services*] **the Oregon Health Authority**, have charge of the Center for Health Statistics.

(b) Administer and enforce the provisions of this chapter and the rules adopted pursuant thereto for the efficient administration of the system of vital statistics.

(c) Direct and supervise the system of vital statistics and the Center for Health Statistics and be custodian of its records.

(d) Direct, supervise and control the activities of all persons when they are engaged in activities pertaining to the operation of the system of vital statistics.

(e) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics.

(f) Prescribe, furnish and distribute such forms as are required by this chapter and the rules adopted pursuant thereto or prescribe other means for transmission of data to accomplish the purpose of complete and accurate reporting and registration.

(g) Prepare and publish reports of vital statistics of this state and such other reports as may be required by the [*Department of Human Services*] **Oregon Health Authority**.

(h) Provide to local health agencies such copies of or data derived from certificates and reports required under this chapter as the state registrar shall determine are necessary for local health planning and program activities. The state registrar shall establish a schedule with each local health agency for transmittal of the copies or data. The copies or data shall remain the property of the Center for Health Statistics and the uses that may be made of them shall be determined by the state registrar.

(i) Provide local health agencies training and consultation in working with health data.

(2) The state registrar may delegate such functions and duties vested in the state registrar to employees of the Center for Health Statistics and to employees of any office established or designated under ORS 432.035.

SECTION 610. ORS 432.060 is amended to read:

432.060. (1)(a) All information procured by or furnished to the [*Department of Human Services*] **Oregon Health Authority**, any federal public health agency or any nonprofit health agency that is exempt from taxation under the laws of this state or procured by any agency, organization or person acting jointly with or at the request of the [*department*] **authority**, in connection with special epidemiologic morbidity and mortality studies, is confidential, nondiscoverable and inadmissible in any proceeding and is exempt from disclosure under ORS 192.410 to 192.505. A person communicating information in connection with special epidemiologic morbidity and mortality studies pursuant to this subsection may not be examined about the communication or the information.

(b) Nothing in this subsection affects the confidentiality or admissibility into evidence of data not otherwise confidential or privileged that is obtained from sources other than the [*department*] **authority**.

(c) As used in this subsection, "information" includes, but is not limited to, written reports, notes, records, statements and studies.

(2) The furnishing of morbidity and mortality information to the [*department*] **authority** or health agency, to its authorized representatives or to any other agency, organization or person cooperating in a special epidemiologic study, does not subject any hospital, sanitarium, rest home, nursing home or other organization or person furnishing such information to an action for damages.

(3) Subsection (1) of this section does not prevent the [*department*] **authority** or a health agency from publishing:

(a) Statistical compilations and reports relating to special epidemiologic morbidity and mortality studies, if such compilations and reports do not identify individual cases and sources of information.

(b) General morbidity and mortality studies customarily and continuously conducted by the [*department*] **authority** or health agency that do not involve patient identification.

(4) Nothing in this section prevents disposition of records described in subsection (1) of this section pursuant to ORS 192.105.

SECTION 611. ORS 432.085 is amended to read:

432.085. The [*Department of Human Services*] **Oregon Health Authority** shall adopt, taking into consideration local service needs and interests, rules to allow a county registrar to sell, within six months of the date of the event occurring in the county, certified copies of birth certificates and death certificates.

SECTION 612. ORS 432.119 is amended to read:

432.119. (1) Abstracts of birth and death certificates as provided in ORS 432.105 are public records and open to public inspection except as provided in this section. The county registrar shall mark the abstract of birth in a manner designated by the State Registrar of the Center for Health Statistics to indicate that the record is not to be used by any person compiling a list for publication or a business contact list under the following conditions:

(a) If a birth certificate indicates any of the following:

(A) The father of the child is not identified.

(B) The infant dies after birth.

(C) Congenital anomaly is reported.

(D) Maternal disability or death is indicated.

(b) If the parent of the infant requests that the record not be made available for publication or business contact lists.

(2) The [Department of Human Services] **Oregon Health Authority** or local health department, as provided in ORS 431.416, may use any birth record or abstract as a source of information for activities necessary for the preservation of health or prevention of disease.

SECTION 613. ORS 432.146 is amended to read:

432.146. Except as provided in ORS 432.090 and 432.312, subject to the review of the Oregon Department of Administrative Services, the [Department of Human Services] **Oregon Health Authority** shall establish all fees for services or records provided under ORS 432.005 to 432.165. The fees and charges established under this section shall be authorized by the Legislative Assembly for the [department's] **authority's** budget, as the budget may be modified by the Emergency Board.

SECTION 614. ORS 432.240 is amended to read:

432.240. (1) Upon receipt of a written application to the state registrar, any adopted person 21 years of age and older born in the State of Oregon shall be issued a certified copy of his/her unaltered, original and unamended certificate of birth in the custody of the state registrar, with procedures, filing fees, and waiting periods identical to those imposed upon nonadopted citizens of the State of Oregon pursuant to ORS 432.121 and 432.146. Contains no exceptions.

(2) A birth parent may at any time request from the State Registrar of the Center for Health Statistics or from a voluntary adoption registry a Contact Preference Form that shall accompany a birth certificate issued under subsection (1) of this section. The Contact Preference Form shall provide the following information to be completed at the option of the birth parent:

(a) I would like to be contacted;

(b) I would prefer to be contacted only through an intermediary; or

(c) I prefer not to be contacted at this time. If I decide later that I would like to be contacted, I will register with the voluntary adoption registry. I have completed an updated medical history and have filed it with the voluntary adoption registry. Attached is a certificate from the voluntary adoption registry verifying receipt of the updated medical history.

(3) The certificate from the voluntary adoption registry verifying receipt of an updated medical history under subsection (2) of this section shall be in a form prescribed by the [Department of Human Services] **Oregon Health Authority** and shall be supplied upon request of the birth parent by the voluntary adoption registry.

(4) When the State Registrar of the Center for Health Statistics receives a completed Contact Preference Form from a birth parent, the state registrar shall match the Contact Preference Form with the adopted person's sealed file. The Contact Preference Form shall be placed in the adopted person's sealed file when a match is made.

(5) A completed Contact Preference Form shall be confidential and shall be placed in a secure file until a match with the adopted person's sealed file is made and the Contact Preference Form is placed in the adopted person's file.

(6) Only those persons who are authorized to process applications made under subsection (1) of this section may process Contact Preference Forms.

SECTION 615. ORS 432.287 is amended to read:

432.287. (1) The Director of [Human Services] **the Oregon Health Authority** shall adopt by rule a form of a voluntary acknowledgment of paternity that includes the minimum requirements speci-

fied by the United States Secretary of Health and Human Services. When the form is signed by both biological parents and witnessed by a third party, the form establishes paternity for all purposes when filed with the State Registrar of the Center for Health Statistics, provided there is no male parent already named on the birth certificate. Establishment of paternity under this section is subject to the provisions and the requirements in ORS 109.070. When there is no other male named as father on the child's birth certificate, the filing of such voluntary acknowledgment of paternity form shall cause the state registrar to place the name of the male parent who has signed the voluntary acknowledgment of paternity form on the birth certificate of the child or, if appropriate, issue a new birth certificate containing the name of the child's male parent, as that parent is named in the voluntary acknowledgment of paternity form. When signed by both parents in the health care facility of the child's birth within five days after the birth, the voluntary acknowledgment of paternity form is not a sworn document. When thus signed, a staff member of the health care facility shall witness the signatures of the parents. In all other circumstances, the form is a sworn document. The filing of the voluntary acknowledgment of paternity form created by this section is subject to the payment of any fees that may apply.

(2) The voluntary acknowledgment of paternity form must contain:

- (a) A statement of rights and responsibilities including any rights afforded to a minor parent;
- (b) A statement of the alternatives to and consequences of signing the acknowledgment;
- (c) Instructions on how to file the form with the state registrar and information about any fee required;
- (d) Lines for the Social Security numbers and addresses of the parents; and
- (e) A statement that the rights, responsibilities, alternatives and consequences listed on the acknowledgment were read to the parties prior to signing the acknowledgment.

(3) Upon request, the state registrar shall provide a copy of any voluntary acknowledgment of paternity form to the state agency responsible for administration of the child support enforcement program created under Title IV-D of the Social Security Act. The duty imposed upon the state registrar by this section is limited to birth certificates executed and filed with the state registrar after October 1, 1995.

SECTION 616. ORS 432.312 is amended to read:

432.312. (1) The [Department of Human Services] **Oregon Health Authority** shall impose and collect a filing fee of \$7 for each certificate of death. Of the fee, \$2 shall be deposited to the credit of the Public Health Account and used to carry out the purposes of ORS 97.170 (5) and \$5 shall be deposited to the credit of the State Mortuary and Cemetery Board Account and used in the same manner as funds credited to the account under ORS 692.375.

(2) The expenditures under ORS 97.170 (5) and 692.375 shall not exceed the funds collected under subsection (1) of this section, and in no event shall expenditure on the administration of the funds exceed five percent of the moneys collected.

SECTION 617. ORS 432.317 is amended to read:

432.317. (1) The funeral service practitioner or person acting as a funeral service practitioner who first assumes possession of a dead body or fetus shall make a written report to the county registrar in the county in which death occurred or in which the body or fetus was found within 24 hours after taking possession of the body or fetus. The report shall be on a form prescribed and furnished by the State Registrar of the Center for Health Statistics and in accordance with rules adopted by the [Department of Human Services] **Oregon Health Authority**.

(2) Prior to final disposition of the body, the funeral service practitioner or person acting as a funeral service practitioner who first assumes custody of a dead body shall, prior to final disposition of the body, obtain written authorization for final disposition of the body from the physician, physician assistant practicing under the supervision of a person licensed to practice medicine under ORS chapter 677, certified nurse practitioner or medical examiner who certifies the cause of death as provided in ORS 432.307 (3) on a form prescribed and furnished by the state registrar. If the funeral service practitioner or person acting as a funeral service practitioner is unable to obtain such written authorization prior to final disposition of the body, the practitioner or person, with the oral

consent of the physician, the physician assistant, the nurse practitioner, the medical examiner or a licensed health professional authorized to give such consent on behalf of the physician or medical examiner who is responsible for certifying the cause of death, may authorize final disposition of the body on a form prescribed and furnished by the state registrar.

(3) Prior to final disposition of a fetus, irrespective of the duration of pregnancy, the funeral service practitioner, the person in charge of the institution or other person assuming responsibility for final disposition of the fetus shall authorize final disposition of the fetus on a form prescribed and furnished or approved by the state registrar.

(4) With the consent of the physician, physician assistant practicing under the supervision of a person licensed to practice medicine under ORS chapter 677, nurse practitioner or medical examiner who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition.

(5) An authorization for final disposition issued under the laws of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state. Permits for transporting a body or fetus out of another state issued under the laws of another state shall be authority for transporting a body or fetus into Oregon.

(6) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made shall inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by authorization for final disposition.

(7) Each person in charge of any place for final disposition shall include in the authorization the date of disposition and shall complete and return all authorizations to the county registrar within 10 days after the date of the disposition. When there is no person in charge of the place for final disposition, a responsible party other than the funeral service practitioner or person acting as a funeral service practitioner shall complete and return the authorization to the county registrar within 10 days after the date of disposition.

(8) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. The authorization shall be issued by the state registrar to a licensed funeral service practitioner or person acting as a funeral service practitioner, upon proper application.

(9) Prior to removing a dead body or fetus from the State of Oregon under ORS 692.270, a person acting as a funeral service practitioner as defined in ORS 432.005 (11)(b) shall submit a written notice of removal to the county registrar in the county in which death occurred or in which the body or fetus was found. The notice shall be on a form prescribed and furnished by the State Registrar of the Center for Health Statistics and in accordance with rules adopted by the [*Department of Human Services*] **Oregon Health Authority**. A copy of the written notice of removal shall serve as a transit permit for the remains of the decedent named on the notice.

SECTION 618. ORS 432.500 is amended to read:

432.500. As used in ORS 432.510 to 432.550 and 432.900:

(1) "Clinical laboratory" means a facility where microbiological, serological, chemical, hematological, immunohematological, immunological, toxicological, cytogenetical, exfoliative cytological, histological, pathological or other examinations are performed on material derived from the human body, for the purpose of diagnosis, prevention of disease or treatment of patients by physicians, dentists and other persons who are authorized by license to diagnose or treat humans.

(2) "Department" means the Department of Human Services or its authorized representative.

(3) "Health care facility" means a hospital, as defined in ORS 442.015 [(19)], or an ambulatory surgical center, as defined in ORS 442.015.

(4) "Practitioner" means any person whose professional license allows the person to diagnose or treat cancer in patients.

SECTION 619. ORS 432.510 is amended to read:

432.510. (1) The [*Department of Human Services*] **Oregon Health Authority** shall establish a uniform, statewide, population-based registry system for the collection of information determining the incidence of cancer and benign tumors of the brain and central nervous system and related data. The purpose of the registry shall be to provide information to design, target, monitor, facilitate and

evaluate efforts to determine the causes or sources of cancer and benign tumors among the residents of Oregon and to reduce the burden of cancer and benign tumors in Oregon. Such efforts may include but are not limited to:

(a) Targeting populations in need of cancer screening services or evaluating screening or other cancer control services;

(b) Supporting the operation of hospital registries in monitoring and upgrading the care and the end results of treatment for cancer and benign tumors;

(c) Investigating suspected clusters or excesses of cancer and benign tumors both in occupational settings and in the state's environment generally;

(d) Conducting studies to identify cancer hazards to the public health and cancer hazard remedies; and

(e) Projecting the benefits or costs of alternative policies regarding the prevention or treatment of cancer and benign tumors.

(2) The [department] **authority** shall adopt rules necessary to carry out the purposes of ORS 432.510 to 432.550 and 432.900, including but not limited to designating which types of cancer and benign tumors of the brain and central nervous system are reportable to the statewide registry, the data to be reported, the data reporting standards and format and the effective date after which reporting by health care facilities, clinical laboratories and practitioners shall be required. When adopting rules under this subsection, the [department] **authority** shall, to the greatest extent practicable, conform the rules to the standards and procedures established by the American College of Surgeons Commission on Cancer, with the goal of achieving uniformity in the collection and reporting of data.

(3) The [department] **authority** shall:

(a) Conduct a program of epidemiologic analyses of registry data collected under subsection (1) of this section to assess control, prevention, treatment and causation of cancer and benign tumors in Oregon; and

(b) Utilize the data to promote, facilitate and evaluate programs designed to reduce the burden of cancer and benign tumors among the residents of Oregon.

(4) The [department] **authority** shall:

(a) Collaborate in studies of cancer and benign tumors with clinicians and epidemiologists and publish reports on the results of such studies; and

(b) Cooperate with the National Institutes of Health and the Centers for Disease Control and Prevention in providing incidence data for cancer and benign tumors.

(5) The [department] **authority** shall establish a training program for the personnel of participating health care facilities and a quality control program for data for cancer and benign tumors reported to the state registry.

SECTION 620. ORS 432.520 is amended to read:

432.520. (1) Except as provided in subsection (2) of this section, any health care facility in which patients are diagnosed or provided treatment for cancer or benign tumors of the brain and central nervous system shall report each case of cancer or benign tumors of the brain and central nervous system to the [Department of Human Services] **Oregon Health Authority** within a time period and in a format prescribed by the [department] **authority**. The [department] **authority** shall provide, at cost, reporting services to any health care facility at the option of the health care facility. Health care facilities may also purchase reporting services from another facility or commercial vendor. If a health care facility is unable to report in conformance with the format and standards prescribed by the [department] **authority**, the [department] **authority** may, after consultation with the health care facility, elect to activate its reporting service for the facility. When activated, the [department] **authority** may enter the facility, obtain the information and report it in conformance with the appropriate format and standards. In these instances, the facility shall reimburse the [department] **authority** or its authorized representative for the cost of obtaining and reporting the information.

(2) Upon application to the [department] **authority** by a health care facility, the [department] **authority** shall grant to the health care facility an extension of time in which to meet the reporting requirements of this section. In no event shall the extension of time exceed two years from the date of application.

(3) Any practitioner diagnosing or providing treatment to patients with cancer or benign tumors of the brain and central nervous system shall report each case to the [department] **authority** or its authorized representative within a time period and in a format prescribed by the [department] **authority**. Those cases diagnosed or treated at an Oregon health care facility or previously admitted to an Oregon health care facility for diagnosis or treatment of that instance of cancer or benign tumors of the brain and central nervous system shall be considered by the [department] **authority** to have been reported by the health care practitioner.

(4) Any clinical laboratory diagnosing cases of cancer or benign tumors of the brain and central nervous system shall report each case to the [department] **authority** or its authorized representative within a time period and in a format prescribed by the [department] **authority**.

(5) For the purpose of assuring the accuracy and completeness of reported data, the [department] **authority** shall have the right to periodically review all records that would:

(a) Identify cases of cancer and benign tumors, the treatment of the cancer or benign tumors or the medical status of any patient identified as being treated for cancer or benign tumors; or

(b) Establish characteristics of the cancer or benign tumors.

(6) The [department] **authority** may conduct special studies of cancer morbidity and mortality. As part of such studies, registry personnel may obtain additional information that applies to a patient's cancer or benign tumors and that may be in the medical record of the patient. The record holder may either provide the requested information to the registry personnel or provide the registry personnel access to the relevant portions of the patient's medical record. Neither the [department] **authority** nor the record holder shall bill the other for the cost of providing or obtaining this information.

SECTION 621. ORS 432.530 is amended to read:

432.530. (1) All identifying information regarding individual patients, health care facilities and practitioners reported pursuant to ORS 432.520 shall be confidential and privileged. Except as required in connection with the administration or enforcement of public health laws or rules, no public health official, employee or agent shall be examined in an administrative or judicial proceeding as to the existence or contents of data collected under the registry system for cancer and benign tumors of the brain and central nervous system.

(2) All additional information reported in connection with a special study shall be confidential and privileged and shall be used solely for the purposes of the study, as provided by ORS 432.060. Nothing in this section shall prevent the [Department of Human Services] **Oregon Health Authority** from publishing statistical compilations relating to morbidity and mortality studies that do not identify individual cases or prevent use of this data by third parties to conduct research as provided by ORS 432.540 (1).

SECTION 622. ORS 432.540 is amended to read:

432.540. (1) The [Department of Human Services] **Oregon Health Authority** shall adopt rules under which confidential data may be used by third parties to conduct research and studies for the public good. Research and studies conducted using confidential data from the statewide registry must be reviewed and approved by the Committee for the Protection of Human Research Subjects established in accordance with 45 C.F.R. 46.

(2) The [department] **authority** may enter into agreements to exchange information with other registries for cancer and benign tumors of the brain and central nervous system in order to obtain complete reports of Oregon residents diagnosed or treated in other states and to provide information to other states regarding the residents of other states diagnosed or treated in Oregon. Prior to providing information to any other registry, the [department] **authority** shall ensure that the recipient registry has comparable confidentiality protections.

SECTION 623. ORS 432.900 is amended to read:

432.900. (1) In addition to any other liability or penalty provided by law, the Director of [*Human Services*] **the Oregon Health Authority** may impose a civil penalty on any person for willful failure to comply with any part of ORS 432.520. A civil penalty may be imposed against a health care facility for each day compliance is refused. The penalty shall be \$50 per day for the first 30 days and \$500 per day thereafter. A civil penalty of \$50 may be imposed against a practitioner for each day compliance is refused.

(2) Any fines collected pursuant to subsection (1) of this section shall be paid into the State Treasury and deposited in the General Fund.

(3) Civil penalties described in subsection (1) of this section shall be imposed in the manner provided in ORS 183.745.

SECTION 624. ORS 433.001 is amended to read:

433.001. As used in ORS 433.001 to 433.045 and 433.110 to 433.770 unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[1] (2) “Communicable disease” has the meaning given that term in ORS 431.260.

[2] (3) “Condition of public health importance” has the meaning given that term in ORS 431.260.

[3] *“Department” means the Department of Human Services.*

(4) “Director” means the Director of [*Human Services*] **the Oregon Health Authority.**

(5) “Isolation” means the physical separation and confinement of a person or group of persons who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated persons to prevent or limit the transmission of the disease to nonisolated persons.

(6) “Local public health administrator” has the meaning given that term in ORS 431.260.

(7) “Local public health authority” has the meaning given that term in ORS 431.260.

(8) “Property” means animals, inanimate objects, vessels, public conveyances, buildings and all other real or personal property.

(9) “Public health measure” has the meaning given that term in ORS 431.260.

(10) “Quarantine” means the physical separation and confinement of a person or group of persons who have been or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from persons who have not been exposed to a communicable disease or possibly communicable disease, to prevent or limit the transmission of the disease to other persons.

(11) “Reportable disease” has the meaning given that term in ORS 431.260.

(12) “Toxic substance” has the meaning given that term in ORS 431.260.

SECTION 625. ORS 433.004 is amended to read:

433.004. (1) The [*Department of Human Services*] **Oregon Health Authority** shall by rule:

(a) Specify reportable diseases;

(b) Identify those categories of persons who must report reportable diseases and the circumstances under which the reports must be made;

(c) Prescribe the procedures and forms for making such reports and transmitting the reports to the [*department*] **authority**; and

(d) Prescribe measures for investigating the source and controlling reportable diseases.

(2) Persons required under the rules to report reportable diseases shall do so by reporting to the local public health administrator. The local public health administrator shall transmit such reports to the [*department*] **authority**.

(3) In addition to other grounds for which a state agency may exercise disciplinary action against its licensees or certificate holders, the substantial or repeated failure of a licensee or certificate holder to report when required to do so under subsection (2) of this section shall be cause for the exercise of any of the agency’s disciplinary powers.

(4) Any person making a report under this section is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the making of a report under this section or to the contents of the report.

SECTION 626. ORS 433.006 is amended to read:

433.006. In response to each report of a reportable disease, the local public health administrator shall assure that investigations and control measures, as prescribed by [Department of Human Services] **Oregon Health Authority** rule, shall be conducted.

SECTION 627. ORS 433.008 is amended to read:

433.008. (1) Notwithstanding ORS 192.410 to 192.505, the [Department of Human Services] **Oregon Health Authority**, the local public health administrator, all officers and employees thereof and all persons to whom disclosures are made under this subsection or subsection (2) of this section shall not disclose the name or address of, or otherwise disclose the identity of, any person reported under ORS 433.004 except to officers or employees of federal, state or local government public health agencies as may be necessary for the administration or enforcement of public health laws or rules.

(2) If the [department] **authority** or local public health administrator has determined that a reported person's disease or condition is in a contagious state and that the person is violating the rules of the [department] **authority** pertaining to control of that disease, it may disclose that person's name and address to persons other than those stated in subsection (1) of this section if clear and convincing evidence in the particular instance requires disclosure to avoid a clear and immediate danger to other individuals or to the public generally. A decision not to disclose information under this subsection, if made in good faith, shall not subject the entity or person withholding the information to any liability.

(3) Except where required in connection with the administration or enforcement of public health laws or rules, no public health official or employee shall be examined in an administrative or judicial proceeding as to the existence or contents of a report under ORS 433.004 or any record thereof.

(4) The disclosures and examination prohibited by this section may otherwise be authorized by the specific written consent of the person who is the subject of the report or the authorized representative of the person.

SECTION 628. ORS 433.010 is amended to read:

433.010. (1) No person shall willfully cause the spread of any communicable disease within this state.

(2) Whenever Oregon Revised Statutes require a person to secure a health certificate, such certificate shall be acquired from a physician licensed by the Oregon Medical Board or the Board of Naturopathic Examiners in accordance with the rules of the [Department of Human Services] **Oregon Health Authority**.

SECTION 629. ORS 433.012 is amended to read:

433.012. The [Department of Human Services] **Oregon Health Authority** shall provide the necessary laboratory examinations requested by local health departments for the diagnosis of those communicable diseases identified by rule of the [department] **authority** to be a reportable disease.

SECTION 630. ORS 433.017 is amended to read:

433.017. (1) Every licensed physician attending a pregnant woman in this state for conditions relating to her pregnancy during the period of gestation or at the time of delivery shall, as required by rule of the [Department of Human Services] **Oregon Health Authority**, take or cause to be taken a sample of blood of every woman so attended at the time of the first professional visit or within 10 days thereafter. The blood specimen thus obtained shall be submitted to a licensed laboratory for such tests related to any infectious condition which may affect a pregnant woman or fetus, as the [department] **authority** shall by rule require, including but not limited to an HIV test as defined in ORS 433.045.

(2) Every other person permitted by law to attend a pregnant woman in this state, but not permitted by law to take blood samples, shall, as required by rule of the [department] **authority**, cause a sample of blood of such pregnant woman to be taken by a licensed physician, and have such sample submitted to a licensed laboratory for the tests described under subsection (1) of this section.

(3) In all cases under subsections (1) and (2) of this section the physician shall request consent of the patient to take a blood sample. No sample shall be taken without such consent.

SECTION 631. ORS 433.035 is amended to read:

433.035. (1)(a) The Public Health Director or a local public health administrator may require testing or medical examination of any person who may have, or may have been exposed to, a communicable disease identified by rule of the [*Department of Human Services*] **Oregon Health Authority** to be a reportable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency declared by the Governor as authorized by ORS 433.441. The Public Health Director or the local public health administrator must issue a written order for testing or medical examination pursuant to this section.

(b) A written order must:

(A) Include findings stating the communicable disease that the Public Health Director or the local public health administrator believes the person has and the reasons for that belief.

(B) State whether medical or laboratory confirmation of the disease is feasible and possible and whether such confirmation would enable control measures to be taken to minimize infection of others with the disease.

(C) Include a statement that the person may refuse to submit to the testing or medical examination and that if the testing or examination is refused, the Public Health Director or the local public health administrator may seek the imposition of a public health measure, including isolation or quarantine pursuant to ORS 433.121 or 433.123.

(2) When a person is directed to submit to a test or examination under this section and the person agrees to do so, the person shall submit to any testing or examination as may be necessary to establish the presence or absence of the communicable disease for which the testing or examination was directed. The examination shall be carried out by the local health officer or a physician licensed by the Oregon Medical Board or the Board of Naturopathic Examiners. A written report of the results of the test or examination shall be provided to the person ordering the test or examination, and upon request, to the person tested or examined. Laboratory examinations, if any, shall be carried out by the laboratory of the [*department*] **authority** whenever the examinations are within the scope of the tests conducted by the laboratory. If treatment is needed, the person or the parent or guardian of the person shall be liable for the costs of treatment based on the examination carried out under this section, if the person liable is able to pay the treatment costs. Cost of any examination performed by a physician in private practice shall be paid from public funds available to the local public health administrator, if any, or from county funds available for general governmental expenses in the county that the local public health administrator serves or in the county where the person tested or examined resides if the local public health administrator serves more than one county or the test or examination was ordered by the Public Health Director or local public health administrator.

(3) If a person has a communicable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency, the Public Health Director or the local public health administrator may issue an order requiring the person to complete an appropriate prescribed course of medication or other treatment for the communicable disease, including directly observed therapy if appropriate, and to follow infection control provisions for the disease. The order shall also include statements that the person may refuse the medication or other treatment and that the person's failure to comply with the order issued under this subsection may result in the Public Health Director or the local public health administrator seeking the imposition of a public health measure, including isolation or quarantine as authorized by ORS 433.121 and 433.123.

(4) The Public Health Director or the local public health administrator must make every effort to obtain voluntary compliance from a person for any testing, medical examination and treatment required under this section.

(5) Any action taken by the Public Health Director or the local public health administrator under this section to compel testing, medical examination or treatment of a person who has a

communicable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency must be the least restrictive alternative available to accomplish the results necessary to minimize the transmission of the disease to others.

SECTION 632. ORS 433.040 is amended to read:

433.040. (1) As used in this section, “vaccine” includes vaccines, immune products and chemoprophylactic medications.

(2) When the State Health Officer of the [*Department of Human Services*] **Oregon Health Authority** determines that there is clear evidence that adverse and avoidable health outcomes from a preventable and acute communicable disease are expected to affect identifiable categories of high-risk individuals throughout Oregon and that assistance with the administration of vaccine is warranted due to a vaccine shortage to protect or treat such individuals, the health officer shall implement the Oregon Vaccine Education and Prioritization Plan as provided in subsection (3) of this section.

(3) The [*Department of Human Services*] **authority** shall develop and adopt by rule the Oregon Vaccine Education and Prioritization Plan to protect the public health during a vaccine shortage. The plan shall consist of:

(a) Guidelines for physicians, nurses, hospitals, health systems, pharmacies and others that hold vaccines for the distribution and administration of vaccines. The guidelines shall include, but are not limited to, a definition of high-risk groups for priority protection or treatment in the event a vaccine shortage is imminent;

(b) Rules for imposing a civil penalty of \$500 against persons who knowingly violate the guidelines for each repeat violation of the guidelines; and

(c) Procedures for:

(A) Mobilizing public and private health resources to assist in vaccine distribution and administration; and

(B) Notifying health professional regulatory boards and licensing authorities of repeated violations of the guidelines by health professionals regulated by the board or licensed by the **licensing** authority.

(4) If the [*department*] **Oregon Health Authority** adopts temporary rules to implement subsection (2) of this section, the rules adopted are not subject to the requirements of ORS 183.335 (6)(a). The [*department*] **authority** may amend the temporary rules adopted pursuant to subsection (3) of this section as often as is necessary to respond to a vaccine shortage.

SECTION 633. ORS 433.045 is amended to read:

433.045. (1) Except as provided in ORS 433.017, 433.055 (3) and 433.080, no person shall subject the blood of an individual to an HIV test without first obtaining informed consent as described in subsection (2) or (7) of this section.

(2) A physician licensed under ORS chapter 677 shall comply with the requirement of subsection (1) of this section through the procedure in ORS 677.097. Any other licensed health care provider or facility shall comply with the requirement of subsection (1) of this section through a procedure substantially similar to that specified in ORS 677.097. Any other person shall comply with this requirement through use of such forms, procedures and educational materials as the [*Department of Human Services*] **Oregon Health Authority** shall specify.

(3) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, no person shall disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except as required or permitted by federal law, the law of this state or any rule, including any [*Department of Human Services*] **authority** rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.

(4) Any person who complies with the requirements of this section shall not be subject to an action for civil damages.

(5) An HIV test shall be considered diagnosis of venereal disease for purposes of ORS 109.610.

(6) As used in this section:

(a) "HIV test" means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

(b) "Person" includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance producer, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them. For purposes of subsection (3) of this section, "person" does not include an individual acting in a private capacity and not in an employment, occupational or professional capacity.

(7) Whenever an insurer, insurance producer or insurance-support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the use of such a test must be revealed to the applicant and the written consent thereof obtained. The consent form shall disclose the purpose of the test and the persons to whom the results may be disclosed.

SECTION 634. ORS 433.055 is amended to read:

433.055. (1) The [*Department of Human Services*] **Oregon Health Authority** shall conduct studies of the prevalence of the HIV infection in this state. Its findings shall be reported to the Public Health Advisory Board, the Conference of Local Health Officials, the Emergency Board and other interested bodies at regular intervals, commencing in January 1988. The [*Department of Human Services*] **authority** may cause the prevalence study of persons sentenced to the Department of Corrections of this state, as defined in ORS 421.005, to be made.

(2) The [*Department of Human Services*] **authority** shall contract with an appropriate education agency to prepare a curriculum regarding HIV infection, acquired immune deficiency syndrome (AIDS) and prevention of the spread of AIDS for all school districts and offer workshops to prepare teachers and parents to implement the curriculum. The [*department*] **authority** shall award incentive grants from funds available therefor to school districts to encourage use of the curriculum in the schools.

(3) Prior informed consent to HIV antibody testing need not be obtained from an individual if the test is for the purpose of research as authorized by the [*Department of Human Services*] **authority** and if the testing is performed in a manner by which the identity of the test subject is not known, and may not be retrieved by the researcher.

SECTION 635. ORS 433.060 is amended to read:

433.060. As used in ORS 433.060 to 433.085 unless the context requires otherwise:

(1) [*"Department" means the Department of Human Services*] **"Authority" means the Oregon Health Authority.**

(2) "Health care facility" means a facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapter 426 and 430.397 to 430.401 or ORS chapter 430.

(3) "Hepatitis test" means a test of an individual for the presence of hepatitis B or C or for any other substance specifically indicating the presence of hepatitis B or C.

(4) "HIV test" means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

(5) "Licensed health care provider" or "health care provider" means a person licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or 685 or ORS 682.216, or under comparable statutes of any other state.

(6) "Local public health administrator" means the public health administrator of the county or district health department for the jurisdiction in which the reported substantial exposure occurred.

(7) "Local public health officer" means the health officer, as described in ORS 431.418, of the county or district health department for the jurisdiction in which the substantial exposure occurred.

(8) "Occupational exposure" means a substantial exposure of a worker in the course of the worker's occupation.

(9) "Source person" means a person who is the source of the blood or body fluid in the instance of a substantial exposure of another person.

(10) "Substantial exposure" means an exposure to blood or certain body fluids as defined by rule of the [Department of Human Services] **authority** to have a potential for transmitting the human immunodeficiency virus based upon current scientific information.

(11) "Worker" means a person who is licensed or certified to provide health care under ORS chapters 677, 678, 679, 680, 684 or 685 or ORS 682.216, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory, as defined in ORS 438.010 [(1)], a firefighter, a law enforcement officer, as defined in ORS 414.805, a corrections officer or a parole and probation officer.

SECTION 636. ORS 433.065 is amended to read:

433.065. (1) The [Department of Human Services] **Oregon Health Authority** shall by rule prescribe procedures:

(a) Whereby a worker who has experienced an occupational exposure may request or cause to be requested the source person's voluntary informed consent to an HIV test;

(b) Whereby a person who, while being administered health care, has experienced a substantial exposure from a worker shall be given notice of such exposure and be given opportunity to request or cause to be requested the worker's voluntary informed consent to an HIV test; and

(c) Whereby a person who has experienced a substantial exposure shall be offered information about HIV infection, methods of preventing HIV infection and HIV tests.

(2) Rules prescribing procedures under subsection (1)(a) of this section may require the participation or intervention of the health care facility and licensed health care provider providing care to the source person and may require the further participation or intervention of the local public health administrator or local public health officer.

(3) Where the source person under subsection (1)(a) of this section is not known to be under the care of a health care facility or provider or cannot be located, and in the case of procedures under subsection (2) of this section, the rules may require the participation and intervention of the local public health administrator.

(4) The rules under this section may also include, but need not be limited to, time frames within which the notice and other procedures are to be performed and by whom, prescribed forms for reporting of exposures, and for recording of results of procedures undertaken and restrictions upon disclosure of such reports and records only to specific persons.

SECTION 637. ORS 433.075 is amended to read:

433.075. (1) The informed consent provisions of ORS 433.045 (1) and (2) apply to any request for consent to an HIV test under rules adopted pursuant to ORS 433.065.

(2) When a source person is deceased, consent for voluntary informed consent under ORS 433.065 shall be from the next of kin.

(3) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the exposed person requesting the test, or the exposed person's employer in the case of an occupational exposure, shall be responsible for the cost of the testing.

(4) Where an employer provides a program of prevention, education and testing for HIV exposures for its employees, the employee to be tested under the provisions of this Act shall comply with the procedures provided by such program. Such program must be approved by the [Department of Human Services] **Oregon Health Authority**.

(5) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the results shall be reported confidentially to the person who suffered the substantial exposure giving rise to the test.

(6) The confidentiality provisions of ORS 433.045 (3) apply to any person who receives an HIV test result pursuant to ORS 433.080 or rules adopted under ORS 433.065. Any person who complies with the requirements of this subsection shall not be subject to an action for damages.

SECTION 638. ORS 433.080 is amended to read:

433.080. When the [*Department of Human Services*] **Oregon Health Authority** declares by rule that mandatory testing of source persons could help a defined class of workers from being infected or infecting others with the human immunodeficiency virus, the following apply:

(1) When a source person, after having been first requested to consent to testing by rules adopted under ORS 433.065, has refused or within a time period prescribed by rule of the [*department*] **authority** has failed to submit to the requested test, except when the exposed person has knowledge that the exposed person has a history of a positive HIV test, the exposed person may seek mandatory testing of the source person by filing a petition with the circuit court for the county in which the exposure occurred. The form for the petition shall be as prescribed by the [*department*] **authority** and shall be obtained from the local public health department.

(2) The petition shall name the source person as the respondent and shall include a short and plain statement of facts alleging:

(a) The petitioner is a worker subjected to an occupational exposure or a person who has been subjected to a substantial exposure by a worker administering health care and the respondent is the source person;

(b) The petitioner is in the class of workers defined by rule of the [*Department of Human Services*] **authority** under this section;

(c) All procedures for obtaining the respondent's consent to an HIV test by rules adopted under ORS 433.065 have been exhausted by the petitioner and the respondent has refused to consent to the test, or within the time period prescribed by rule of the [*department*] **authority** has failed to submit to the test;

(d) The petitioner has no knowledge that the petitioner has a history of a positive HIV test and has since the exposure, within a time period prescribed by rule of the [*department*] **authority**, submitted a specimen from the petitioner for an HIV test; and

(e) The injury that petitioner is suffering or will suffer if the source person is not ordered to submit to an HIV test.

(3) The petition shall be accompanied by the certificate of the local public health administrator declaring that, based upon information in the possession of the administrator, the facts stated in the allegations under subsection (2)(a), (b) and (c) of this section are true.

(4) Upon the filing of the petition, the court shall issue a citation to the respondent stating the nature of the proceedings, the statutes involved and the relief requested and, that if the respondent does not appear at the time and place for hearing stated in the citation, that the court will order the relief requested in the petition.

(5) The citation shall be served on the respondent together with a copy of the petition by the county sheriff or deputy. The person serving the citation and petition shall, immediately after service thereof, make a return showing the time, place and manner of such service and file it with the clerk of the court.

(6) The hearing shall be held within three days of the service of the citation upon the respondent. The court may for good cause allow an additional period of 48 hours if additional time is requested by the respondent.

(7) Both the petitioner and the local public health administrator certifying to the matter alleged in the petition shall appear at the hearing. The hearing of the case shall be informal with the object of resolving the issue before the court promptly and economically between the parties. The parties shall be entitled to subpoena witnesses, to offer evidence and to cross-examine. The judge may examine witnesses to insure a full inquiry into the facts necessary for a determination of the matter before the court.

(8) After hearing all of the evidence, the court shall determine the truth of the allegations contained in the petition. The court shall order the respondent to submit to the requested test by a licensed health care provider without delay if, based upon clear and convincing evidence, the court finds that:

(a) The allegations in the petition are true;

(b) The injury the petitioner is suffering or will suffer is an injury that only the relief requested will adequately remedy; and

(c) The interest of the petitioner in obtaining the relief clearly outweighs the privacy interest of the respondent in withholding consent.

(9) If the court does not make the finding described in subsection (8) of this section, the court shall dismiss the petition.

(10) Failure to obey the order of the court shall be subject to contempt proceedings pursuant to law.

SECTION 639. ORS 433.085 is amended to read:

433.085. (1) Notwithstanding any other provision of law, any employee of the Department of Corrections, law enforcement officer as defined in ORS 414.805, parole and probation officer, corrections officer, emergency medical technician, licensed health care provider, firefighter or paramedic who in the performance of the individual's official duties comes into contact with the bodily fluids of another person may seek to have the source person tested for HIV and hepatitis B or C by petitioning the circuit court for an order compelling the testing.

(2) The petition submitted to the court must set forth the facts and circumstances of the contact and the reasons the petitioner and a medically trained person representing the petitioner, if available, believe the exposure was substantial and the testing would be appropriate. The petition must also include information sufficient to identify the alleged source person and the location of the alleged source person, if known. The court shall hold an ex parte hearing in person or by telephone on the day of receipt of the petition, if possible, or within a reasonable period not to exceed three judicial days. Upon a showing that the petitioner has been exposed to the bodily fluids of another person and the circumstances create probable cause to conclude that a significant possibility exists that the petitioner has been exposed to HIV or hepatitis B or C, the court shall order the testing of the source person.

(3) If the court orders a test under subsection (2) of this section:

(a) The order shall direct the source person to allow the required test to be performed by a licensed health care provider without delay and may specify a time when the test must be completed. If the source person is in custody or otherwise subject to the legal control of another person, the order may be directed to the agency with custody of, or the other person with legal control over, the source person and direct the agency or other person to provide the source person with a copy of the order and ensure that the required test is performed.

(b) The petitioner shall designate a physician or nurse practitioner to receive the test results on behalf of the petitioner.

(c) The order must inform the source person, agency or other person of who is to receive the results of the test and of how to obtain payment for costs under subsection (6) of this section.

(d) The order shall be served on the source person, or the agency with custody of or other person with legal control over the source person, in the manner directed by the court. The court may provide for service of the order by any means appropriate to the circumstances of the source person, including but not limited to service by the petitioner or by directing the sheriff to serve the order. Any costs of service shall be paid as provided under subsection (6) of this section.

(e) The order is enforceable through the contempt powers of the court.

(4) The results of any test ordered under this section are confidential and subject to the confidentiality provisions of ORS 433.045 (3). The results shall be made available only to those persons authorized under ORS 433.045 (3) and to the petitioner, any physician or nurse practitioner designated by the petitioner to receive the results, the [Department of Human Services] **Oregon Health Authority** and the source person.

(5) If the test results are negative, the court may order the source person to submit to additional testing six months after the first test was conducted.

(6) No charge or filing fee may be imposed for the filing of a petition under this section. The cost of any testing ordered under this section shall be the responsibility of the employer of the petitioner.

SECTION 640. ORS 433.090 is amended to read:
433.090. As used in ORS 433.090 to 433.102:

(1) "Authorized user" means a person or entity authorized to provide information to or to receive information from an immunization registry or immunization tracking and recall system under ORS 433.090 to 433.102. "Authorized user" includes, but is not limited to, licensed health care providers, health care institutions, insurance carriers, the Oregon medical assistance program, parents or guardians of children under 18 years of age, clients 18 years of age or older, post-secondary education institutions, schools, children's facilities, local health departments, the [*Department of Human Services*] **Oregon Health Authority** and agents of the [*department*] **authority**.

(2) "Children's facility" has the meaning given that term in ORS 433.235.

(3) "Client" means any person registered with any Oregon immunization tracking and recall system.

(4) "Immunization record" includes but is not limited to the following:

- (a) Any immunization received;
- (b) Date immunization was received;
- (c) Complication or side effect associated with immunization;
- (d) Date and place of birth of a client;
- (e) Hospital where a client was born;
- (f) Client's name; and
- (g) Mother's name.

(5) "Immunization registry" means any listing of clients and information relating to their immunization status, without regard to whether the registry is maintained in this state or elsewhere.

(6) "Immunization tracking and recall record" includes but is not limited to the client's name, address of the parent or guardian of the client, telephone number, insurance carrier, health care provider and other information needed to send reminder cards to, place telephone calls to or personally contact the client or the parent or the guardian of a client for the purposes of informing the client, parent or guardian that the client is late in receiving the recommended immunizations.

(7) "Local health department" has the meaning given that term in ORS 433.235.

(8) "Parent or guardian" has the meaning given the term "parent" in ORS 433.235.

(9) "Post-secondary education institution" means:

(a) A state institution of higher education under the jurisdiction of the State Board of Higher Education;

(b) A community college operated under ORS chapter 341;

(c) A school or division of Oregon Health and Science University; or

(d) An Oregon-based, generally accredited, private institution of higher education.

(10) "Provider" means a physician or a health care professional who is acting within the scope of his or her licensure and responsible for providing immunization services or for coordinating immunization services within a clinic, public health site, school or other immunization site.

(11) "School" has the meaning given that term in ORS 433.235.

(12) "Tracking and recall system" means a system attached to an immunization registry designed to contact clients listed in the immunization registry for the purposes of assisting in the completion of the immunization series in a timely manner.

SECTION 641. ORS 433.094 is amended to read:

433.094. The [*Department of Human Services*] **Oregon Health Authority**, a local health department, or both, or their agents or other providers may develop an immunization registry and an associated tracking and recall system to include, but not be limited to, children and young adults. This system shall include, but not be limited to, the following:

(1) Registering all clients born in, living in or receiving services in this state;

(2) Tracking and updating immunization histories of the registered clients;

(3) Allowing a provider to provide information to and obtain information from the immunization and immunization tracking and recall records contained in an immunization registry without the consent of the client or the parent or guardian of the client;

- (4) Allowing an immunization record of a client to be released to authorized users;
- (5) Notifying in writing the parent or guardian of a client, at least through five years of age, when the tracking and recall system indicates that a client has missed a scheduled immunization and, if the client has not been immunized after two notifications, arranging to have the parent or guardian contacted personally;
- (6) Integrating with any immunization registry and its associated tracking and recall systems; and
- (7) Working with health care providers to develop easy information transfer systems.

SECTION 642. ORS 433.100 is amended to read:

433.100. (1) The [Department of Human Services] **Oregon Health Authority** shall adopt rules pertaining to the development and implementation of the immunization registries and their associated tracking and recall systems. The rules shall include a process that allows a client who is 18 years of age or older, a custodial parent or guardian to control the transfer of information from the immunization record or the immunization tracking and recall record when such control is necessary to protect the health or safety of the family or the client.

(2) Nothing in this section requires the consent of a parent or guardian prior to enrolling the child in the registry or restricts the registry from providing tracking and recall information to a custodial parent or guardian.

(3)(a) Pursuant to rules adopted by the [department, the department] **authority, the authority** may charge fees to authorized users, except hospitals, schools and individual health care providers, for services requested from an immunization registry, including associated tracking and recall systems maintained by the [department] **authority**. Authorized users may make voluntary contributions to the [department] **authority** to help support the operation of an immunization registry established under ORS 433.094.

(b) Fees authorized under paragraph (a) of this subsection shall be assessed only against managed care organizations, health maintenance organizations, physician organizations and insurance carriers that are using the information from the registries for quality improvement activities for their privately insured patients.

(c) All moneys received by the [department] **authority** under this section shall be paid into the State Treasury and placed in the General Fund to the credit of the Public Health Account. Such moneys are continuously appropriated to the [department] **authority** and shall be used only for the administration and enforcement of ORS 433.090 to 433.102.

SECTION 643. ORS 433.110 is amended to read:

433.110. Every physician or nurse attending a person affected with any communicable disease shall use all precautionary measures to prevent the spread of the disease as the [Department of Human Services] **Oregon Health Authority** may prescribe by rule.

SECTION 644. ORS 433.133 is amended to read:

433.133. (1)(a) Any person or group of persons who is isolated or quarantined pursuant to ORS 433.121 or 433.123 may apply to the court for an order to show cause why the individual or group should not be released.

(b) The court shall rule on the application to show cause within 48 hours of the filing of the application.

(c) The court must grant the application if there is a reasonable basis to support the allegations in the application, and the court shall schedule a hearing on the order requiring the [Department of Human Services] **Oregon Health Authority** to appear and to show cause within five working days of the filing of the application.

(d) The issuance of an order to show cause and ordering the [department] **authority** to appear and show cause does not stay or enjoin an isolation or quarantine order.

(2)(a) A person or group of persons who is isolated or quarantined may request a hearing in the court for remedies regarding breaches of the conditions of isolation or quarantine required by ORS 433.128.

(b) The court must hold a hearing if there is a reasonable basis to believe there has been a breach of the conditions of isolation or quarantine required by ORS 433.128.

(c) A request for a hearing shall not stay or enjoin an order for isolation or quarantine.

(d) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court shall hold a hearing on the matters alleged as soon as practicable.

(e) If a hearing is not granted under paragraph (c) of this subsection, the court shall hold a hearing on the matters alleged within five days from receipt of the request.

(3) In any proceedings brought for relief under this section, in extraordinary circumstances and for good cause shown, or with consent of the petitioner or petitioners the Public Health Director or local public health administrator may move the court to extend the time for a hearing. The court in its discretion may grant the extension giving due regard to the rights of the affected persons, the protection of the public health, the severity of the emergency and the availability of necessary witnesses and evidence.

(4) If a person or group of persons who is detained cannot personally appear before the court because such an appearance poses a risk of serious harm to others, the court proceeding may be conducted by legal counsel for the person or group of persons and be held at a location or via any means that allows all parties to fully participate.

(5) If the court finds, by clear and convincing evidence, that a person or group of persons no longer poses a serious risk to the health and safety to others, the court may order the release of that person or group of persons from isolation or quarantine.

(6) If the court finds by clear and convincing evidence that a person or group of persons is not being held in accordance with the conditions of isolation or quarantine required by ORS 433.128, the court may order an appropriate remedy to ensure compliance with ORS 433.128.

SECTION 645. ORS 433.140 is amended to read:

433.140. (1) The expenses incurred under ORS 433.128, when properly certified by the local public health administrator, shall be paid by the person who is isolated or quarantined, when the person is able to pay the expenses.

(2) The [Department of Human Services] **Oregon Health Authority** may provide general assistance, including medical care for the person who is isolated or quarantined, on the basis of need, provided that no payment shall be made for the care of any such person in or under the care of any public institution or public agency or municipality.

SECTION 646. ORS 433.220 is amended to read:

433.220. (1) If upon inspection pursuant to ORS 433.216, there is discovered among the passengers or goods being transported by any public or private conveyance the existence of any communicable disease or toxic substance that presents a substantial threat to public health, the Public Health Director, under rules of the [Department of Human Services] **Oregon Health Authority**, may:

(a) Issue an order for testing, medical examination or treatment under ORS 433.035.

(b) Isolate or quarantine such persons or goods in accordance with ORS 433.121, 433.123 or 433.142.

(c) [Cause the passengers and material in the involved conveyance to be subjected to requirements by the Department of Human Services] **Require the passengers and persons conveying materials to follow the authority's rules** for the control of the specific communicable disease or prevention of harm to the public health from the toxic substance.

(d) Offer free immunization in those diseases to which such prophylactic treatment is applicable to all persons exposed in any conveyance.

(2) Should any question arise as to the existence of any emergency, the Public Health Director shall have final jurisdiction.

SECTION 647. ORS 433.235 is amended to read:

433.235. As used in ORS 433.235 to 433.284:

(1) "Administrator" means the principal or other person having general control and supervision of a school or children's facility.

(2) "Children's facility" or "facility" means:

(a) A certified child care facility as described in ORS 657A.030 and 657A.250 to 657A.450, except as exempted by rule of the [*Department of Human Services*] **Oregon Health Authority**;

(b) A program operated by, or sharing the premises with, a certified child care facility, school or post-secondary institution where care is provided to children, six weeks of age to kindergarten entry, except as exempted by rule of the [*department*] **authority**; or

(c) A program providing child care or educational services to children, six weeks of age to kindergarten entry, in a residential or nonresidential setting, except as exempted by rule of the [*department*] **authority**.

(3) "Local health department" means the district or county board of health, public health officer, public health administrator or health department having jurisdiction within the area.

(4) "Parent" means a parent or guardian of a child or any adult responsible for the child.

(5) "Physician" means a physician licensed by the Oregon Medical Board or by the Board of Naturopathic Examiners or a physician similarly licensed by another state or country in which the physician practices or a commissioned medical officer of the Armed Forces or Public Health Service of the United States.

(6) "School" means a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof, except as exempted by rule of the [*Department of Human Services*] **authority**.

SECTION 648. ORS 433.245 is amended to read:

433.245. (1) The Director of [*Human Services*] **the Oregon Health Authority** shall appoint a committee to advise the [*Department of Human Services*] **Oregon Health Authority** on the administration of the provisions of ORS 433.235 to 433.284, including the adoption of rules pursuant to ORS 433.269 (2), 433.273, 433.282 and 433.283.

(2) Members of the committee appointed pursuant to subsection (1) of this section shall include, but need not be limited to, representatives of **the Oregon Health Authority**, the Department of Human Services, the Department of Education, public, private and parochial schools, children's facilities, institutions of post-secondary education, education service districts, local health departments, the boards of county commissioners or county courts and the public.

SECTION 649. ORS 433.255 is amended to read:

433.255. Except in strict conformity with the rules of the [*Department of Human Services*] **Oregon Health Authority**, no child or employee shall be permitted to be in any school or children's facility when:

(1) That child or employee has any restrictable disease;

(2) That child or employee comes from any house in which exists any restrictable disease; or

(3) That child has been excluded as provided in ORS 433.267 (5) or (7).

SECTION 650. ORS 433.260 is amended to read:

433.260. (1) Whenever any administrator has reason to suspect that any child or employee has or has been exposed to any restrictable disease and is required by the rules of the [*Department of Human Services*] **Oregon Health Authority** to be excluded from a school or children's facility, the administrator shall send such person home and, if the disease is one that must be reported to the [*department*] **authority**, report the occurrence to the local health department by the most direct means available.

(2) Any person excluded under subsection (1) of this section may not be permitted to be in the school or facility until the person presents a certificate from a physician, nurse practitioner, local health department nurse or school nurse stating that the person does not have or is not a carrier of any restrictable disease.

SECTION 651. ORS 433.267 is amended to read:

433.267. (1) As a condition of attendance in any school or children's facility in this state, every child through grade 12 shall submit to the administrator one of the following statements unless the

school or facility which the child attends already has on file a record which indicates that the child has received immunizations against the restrictable diseases prescribed by rules of the [Department of Human Services] **Oregon Health Authority** as provided in ORS 433.273:

(a) A statement signed by the parent, a practitioner of the healing arts who has within the scope of the practitioner's license the authority to administer immunizations or a representative of the local health department certifying the immunizations the child has received;

(b) A statement signed by a physician or a representative of the local health department that the child should be exempted from receiving specified immunization because of indicated medical diagnosis; or

(c) A statement signed by the parent that the child has not been immunized as described in paragraph (a) of this subsection because the child is being reared as an adherent to a religion the teachings of which are opposed to such immunization.

(2)(a) A newly entering child or a transferring child shall be required to submit the statement described in subsection (1) of this section prior to attending the school or facility.

(b) Notwithstanding paragraph (a) of this subsection, a child transferring from a school in the United States must submit the statement required by subsection (1) of this section not later than the exclusion date set by rule of the [department] **authority**.

(3) Persons who have been emancipated pursuant to ORS 419B.558 or who have reached the age of consent for medical care pursuant to ORS 109.640 may sign those statements on their own behalf otherwise requiring the signatures of parents under subsection (1) of this section.

(4) The administrator shall conduct a primary evaluation of the records submitted pursuant to subsection (1) of this section to determine whether the child is entitled to begin attendance by reason of having submitted a statement that complies with the requirements of subsection (1) of this section.

(5) If the records do not meet the initial minimum requirements established by rule, the child may not be allowed to attend until the requirements are met. If the records meet the initial minimum requirements, the child shall be allowed to attend.

(6) At the time specified by the [department] **authority** by rule, records for children meeting the initial minimum requirements and records previously on file shall be reviewed for completion of requirements by the administrator to determine whether the child is entitled to continue in attendance. If the records do not comply, the administrator shall notify the local health department and shall transmit any records concerning the child's immunization status to the local health department.

(7) The local health department shall provide for a secondary evaluation of the records to determine whether the child should be excluded for noncompliance with the requirements stated in subsection (1)(a) or (b) of this section. If the child is determined to be in noncompliance, the local health department shall issue an exclusion order and shall send copies of the order to the parent or the person who is emancipated or has reached the age of majority and the administrator. On the effective date of the order, the administrator shall exclude the child from the school or facility and not allow the child to attend the school or facility until the requirements of this section have been met.

(8) The administrator shall readmit the child to the school or facility when in the judgment of the local health department the child is in compliance with the requirements of this section.

(9) The administrator shall be responsible for updating the statement described in subsection (1)(a) of this section as necessary to reflect the current status of the immunization of the child and the time at which the child comes into compliance with immunizations against the restrictable diseases prescribed by rules of the [department] **authority** pursuant to ORS 433.273.

(10) Nothing in this section shall be construed as relieving agencies, in addition to school districts, which are involved in the maintenance and evaluation of immunization records on April 27, 1981, from continuing responsibility for these activities.

(11) All statements required by this section shall be on forms approved or provided by the [department] **authority**.

(12) In lieu of signed statements from practitioners of the healing arts, the [department] **authority** may accept immunization record updates using practitioner documented immunization records generated by electronic means or on [practitioner letterhead but unsigned, if the department] **unsigned practitioner letterhead if the authority** determines such records are accurate.

(13) As used in this section:

(a) "Newly entering child" means a child who is initially attending:

(A) A facility in this state;

(B) A school at the entry grade level;

(C) Either a school at any grade level or a facility from homeschooling; or

(D) A school at any grade level or a facility after entering the United States from another country.

(b) "Transferring child" means a child moving from:

(A) One facility to another facility;

(B) One school in this state to another school in this state when the move is not the result of a normal progression of grade level; or

(C) A school in another state to a school in this state.

SECTION 652. ORS 433.269 is amended to read:

433.269. (1) Local health departments shall make available immunizations to be administered under the direction of the local health officer in convenient areas and at convenient times. No person shall be refused service because of inability to pay.

(2) The local health department and all schools and children's facilities shall report annually to the [Department of Human Services as specified in the rules of the Department of Human Services on the number of children in the area served and those children who are susceptible to restrictable disease as prescribed by rules of the Department of Human Services pursuant to ORS 433.273 by reason of noncompliance] **Oregon Health Authority on the number of children in the area served and the number of children who are susceptible to restrictable disease as prescribed by the authority's rules pursuant to ORS 433.273.** A child exempted under ORS 433.267 shall be considered to be susceptible.

(3) The administrator shall maintain immunization records of children, including children in attendance conditionally because of incomplete immunization schedules and children exempted under ORS 433.267.

SECTION 653. ORS 433.271 is amended to read:

433.271. The [Department of Human Services] **Oregon Health Authority** may not purchase or distribute a pediatric vaccine necessary for school entry immunization requirements if the vaccine contains thimerosal, unless thimerosal is detectable only in trace amounts or no other vaccine for the same purpose is commercially available in a form that does not contain thimerosal. The [department] **authority** may purchase and distribute a pediatric vaccine that contains thimerosal if no other vaccine for the same purpose is commercially available in a form that does not contain thimerosal.

SECTION 654. ORS 433.273 is amended to read:

433.273. The [Department of Human Services] **Oregon Health Authority** shall adopt rules pertaining to the implementation of ORS 433.235 to 433.284, which shall include, but need not be limited to:

(1) The definition of "restrictable" disease;

(2) The required immunization against diseases, including rubella, considered to be dangerous to the public health under ORS 433.267;

(3) The time schedule for immunization;

(4) The approved means of immunization;

(5) The procedures and time schedule whereby children may be excluded from attendance in schools or facilities, including service of notice to parents;

(6) The manner in which immunization records for children are established, evaluated and maintained;

- (7) The exempted schools and children's facilities; and
- (8) The implementation of ORS 433.282 and 433.283.

SECTION 654a. ORS 433.282 is amended to read:

433.282. (1) The [Department of Human Services] **Oregon Health Authority** may require each post-secondary educational institution, except a community college or a career school, to require that each entering full-time student has current immunizations, as required for children attending school pursuant to rules adopted by the [department] **authority** under ORS 433.273, prior to the student's second quarter or semester of enrollment on an Oregon campus, using procedures developed by the institution.

(2) Notwithstanding subsection (1) of this section, the [department] **authority** may require each post-secondary educational institution, except a community college or a career school, to document, using procedures developed by the institution, that each entering full-time student has current immunizations, as required for children attending school pursuant to rules adopted by the [department] **authority** under ORS 433.273, prior to the student attending classes if the student will be attending the institution pursuant to a nonimmigrant visa.

(3) The [department] **authority** by rule shall establish immunization schedules and may further limit the students and programs to which the requirement applies.

(4) The [department] **authority** may conduct validation surveys to ensure compliance with this section.

SECTION 654b. ORS 433.283 is amended to read:

433.283. (1) The [Department of Human Services] **Oregon Health Authority** may require each community college to require that students involved in clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams have current immunizations for measles prior to each student's participation. The requirement shall apply only to those students born on or after January 1, 1957.

(2) The State Board of Education by rule shall define clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams at the community colleges. The [Department of Human Services] **Oregon Health Authority** by rule shall establish immunization schedules and may further limit the students and programs to which the requirement applies. Each community college shall develop procedures to implement and maintain this requirement.

(3) The [Department of Human Services] **authority** may conduct validation surveys to [insure] **ensure** compliance with this section. Community colleges shall be required to keep immunization records only while the student is involved in the program.

SECTION 655. ORS 433.285 is amended to read:

433.285. (1) It hereby is declared to be a matter of public policy of the State of Oregon that in the interest of public health and the prevention of mental retardation, every infant, shall be given tests approved by the [Department of Human Services] **Oregon Health Authority** for the detection of the disease of phenylketonuria and other metabolic diseases.

(2) The [Department of Human Services] **authority** by rule shall specify the diseases for which infants shall be tested under subsection (1) of this section, the appropriate time following delivery for collecting specimens, the manner in which the specimens are to be submitted, the persons responsible for submitting the specimens, the methods of testing and the manner of payment of the fees.

(3) The testing required by subsection (1) of this section shall not be required if the infant is being reared as an adherent to a religion the teachings of which are opposed to such testing. The person responsible for submitting specimens under the rules of the [Department of Human Services] **authority** shall be responsible for submitting a statement signed by the infant's parent that the infant is being so reared. The [department] **authority** by rule shall prescribe the form of the statement.

(4) The [Department of Human Services] **authority** shall adopt by rule a procedure whereby the fees established under subsection (2) of this section shall be waived and no infant refused service because of the parent's inability to pay the fee.

(5) The [Department of Human Services] **authority** by rule shall prescribe the procedure to be followed in cases where initial testing for metabolic diseases is administered too early to detect these diseases, where the sample submitted for testing is improperly collected and where a sample shows an abnormal result. The [Department of Human Services] **authority**, within the limits of funds available from fees collected under this section, shall institute a pilot program for follow-up on abnormal test results.

SECTION 656. ORS 433.290 is amended to read:

433.290. (1) The Legislative Assembly finds that many newborn children are given their first tests for metabolic diseases too early for the detection of these diseases because parents remove these newborn infants from the hospital before the optimum testing period commences. To assure proper first testing and follow-up testing and increase knowledge about the nature and results of these diseases, the [Department of Human Services] **Oregon Health Authority** shall institute and carry on an intensive educational program among physicians, hospitals, public health nurses, the parents of newborn children and the public concerning the disease of phenylketonuria and other metabolic diseases. This educational program shall include information concerning:

(a) The nature of these diseases; and
(b) Examinations for the detection of these diseases in infancy in order that measures may be taken to prevent the mental retardation resulting from these diseases.

(2) The [Department of Human Services] **authority** shall make a special effort specifically to inform expectant parents and parents of newborn children of the necessity of newborn infants receiving appropriate tests within the optimum time range after birth to prevent the mental retardation or other serious complications resulting from these diseases.

SECTION 657. ORS 433.295 is amended to read:

433.295. (1) All physicians, public health nurses and the administrators of hospitals shall report the discovery of cases of phenylketonuria to the [Department of Human Services] **Oregon Health Authority**.

(2) The [Department of Human Services shall furnish all physicians, public health nurses and hospitals forms on which the result of tests for phenylketonuria shall be reported to the Department of Human Services] **authority shall furnish forms that all physicians, public health nurses and hospitals shall use to report to the authority the test results for phenylketonuria.**

SECTION 658. ORS 433.312 is amended to read:

433.312. (1) The [Department of Human Services] **Oregon Health Authority** in consultation with the Oregon Pediatric Society by rule shall establish the appropriate dosage of vitamin K and the procedures for administering vitamin K which may be either by injection or orally.

(2) The [Department of Human Services] **authority** in cooperation with the licensing boards established in ORS chapters 677, 684 and 685 shall notify their licensees of these rules. Any association of midwives shall also be notified.

SECTION 659. ORS 433.314 is amended to read:

433.314. The [Department of Human Services] **Oregon Health Authority** shall institute and carry on an educational program among medical and naturopathic physicians, chiropractors, midwives, potential parents and the public concerning the need for newborn infants to receive vitamin K within 24 hours after birth.

SECTION 660. ORS 433.321 is amended to read:

433.321. (1) In all Oregon hospitals and birthing centers with more than 200 live births per year, each newborn child shall receive a newborn hearing screening test within one month of the date of birth. A hospital or birthing center shall attempt to conduct the test required under this subsection prior to the discharge of the child from the facility.

(2) All Oregon hospitals and birthing centers with fewer than 200 live births per year shall provide the parent or guardian of a newborn child with the appropriate information furnished by the [Department of Human Services] **Oregon Health Authority** concerning the importance of newborn hearing screening tests.

(3) All Oregon hospitals and birthing centers conducting newborn hearing screening tests shall, within 10 days of the test:

(a) Notify the parent or guardian and the health care provider for the newborn child of the test results;

(b) With the results of the test, provide names and contact information for diagnostic facilities in the community; and

(c) Report to the [department] **authority** the results of the test for the newborn child and information identifying the newborn child.

(4) A diagnostic facility conducting newborn hearing tests shall report, within 10 days of the test, to the [department] **authority** the results of the test for the newborn child and information identifying the newborn child.

(5) Each public and private educational institution that provides early intervention services as defined in ORS 343.035 shall disclose to the [department] **authority** information identifying the children referred to the educational institution with diagnosed hearing loss and the enrollment status of the children. The institution may disclose to the [department] **authority** additional information regarding children with hearing loss who are receiving early intervention services if the educational institution has obtained consent to disclose the information.

(6) The [department] **authority**, in collaboration with the Child Development and Rehabilitation Center of the Oregon Health and Science University shall, on an annual basis, provide to all Oregon hospitals and birthing centers the following information:

(a) A description of the responsibilities created by this section;

(b) A list of appropriate screening devices and descriptions of training protocols to ensure that staff members are adequately trained in the use of screening equipment;

(c) A list of newborn hearing screening testing and diagnostic facilities;

(d) A list of public and private educational institutions that provide early intervention services and a description of the geographic area served by each institution; and

(e) Other information related to newborn hearing screening tests that the [department] **authority** deems appropriate.

(7) A hospital or birthing center directed to provide newborn hearing screening tests under this section is exempt from providing such services if the parent or guardian of the newborn child objects to the testing procedure on the grounds that the procedure conflicts with the religious tenets and practices of the parent or guardian. The parent or guardian must sign a statement that the newborn infant is being so reared.

(8) No newborn child may be refused the procedure described in subsection (1) of this section because of an inability of the parent or guardian to pay for the procedure.

SECTION 661. ORS 433.323 is amended to read:

433.323. (1) As used in this section:

(a) “Newborn hearing screening test registry” means a listing of newborn children and information related to their newborn hearing screening tests.

(b) “Tracking and recall system” means a system attached to the newborn hearing screening test registry designed to contact the parent or guardian of a newborn child listed in the newborn hearing screening test registry for the purposes of assisting in testing and in enrollment of the newborn child in early intervention services in a timely manner.

(2) The [Department of Human Services] **Oregon Health Authority** shall implement a newborn hearing screening test registry and tracking and recall system. The registry and system shall include, but are not limited to, the following:

(a) Information on the results of newborn hearing screening tests performed at Oregon hospitals, birthing centers and diagnostic facilities.

(b) Notification of the parent or guardian and the health care provider of a newborn child and of the local public health agency of the county in which the parent or guardian resides when the system indicates that a newborn child has not received a newborn hearing screening test, has been referred to a diagnostic facility for a diagnostic evaluation but has not received the evaluation or

has been diagnosed with hearing loss but has not been enrolled in an educational institution providing early intervention services.

(3) The [department] **authority** shall adopt rules:

(a) Implementing this section and ORS 433.321;

(b) Ensuring the privacy of individuals about whom information is collected pursuant to this section and ORS 433.321; and

(c) Specifying the forms to be used by hospitals, birthing centers, diagnostic facilities and educational institutions to provide the information required under this section and ORS 433.321.

(4) The [department] **authority** shall analyze the information collected under this section to determine the efficacy of this section and ORS 433.321 in identifying hearing loss in the newborn child population and enrolling newborn children in early intervention services.

(5) The [department] **authority** shall issue an annual report detailing the results of newborn hearing screening tests, diagnostic evaluations and participation in early intervention services.

(6) The [department] **authority** shall implement the newborn hearing screening test registry within existing resources. The [department] **authority** may accept contributions of funds and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions not inconsistent with the purposes of the registry.

SECTION 662. ORS 433.326 is amended to read:

433.326. The purpose of ORS 433.321, 433.323 and 433.327 and section 4, chapter 240, Oregon Laws 2003, is to waive the requirement of authorization to disclose information from, or provide information to, the record of a newborn child in the newborn hearing screening test registry and to waive confidentiality in regard to this information. The waiver allows providers, the [Department of Human Services] **Oregon Health Authority** and local health departments and their agents, parents or guardians and diagnostic facilities to share information from the newborn hearing screening test registry without violating confidentiality. The newborn hearing screening test registry and the associated tracking and recall system are designed to increase early and appropriate intervention to minimize delays in developing language skills by the children of this state.

SECTION 663. ORS 433.345 is amended to read:

433.345. (1) If an animal bites a person and the bite causes a break in the skin, or if an animal is suspected of rabies or has been in close contact with an animal suspected of rabies, the facts shall be immediately reported to the local health officer by any person having direct knowledge.

(2) The [Department of Human Services] **Oregon Health Authority**, in consultation with the State Department of Agriculture, shall promulgate rules relating to the handling and disposition of animals that have bitten a person or are suspected of rabies or that have been in close contact with an animal suspected of rabies. Such rules may include requirements for confinement, isolation and inoculation. Owners or persons in possession of animals subject to such rules, shall handle or dispose or allow the handling or disposal of such animals strictly in accordance with such rules.

SECTION 664. ORS 433.350 is amended to read:

433.350. When confinement and observation of an animal for purposes of determining infection with rabies will not avoid the necessity of the application of painful or possibly dangerous preventative treatment to a person who has been bitten or scratched by such animal, the Director of [Human Services] **the Oregon Health Authority** may order possession of the animal to be immediately relinquished to the director or to the authorized representative of the director and may order the animal destroyed for examination of its bodily tissues.

SECTION 665. ORS 433.355 is amended to read:

433.355. (1) In the event of the refusal of the owner or person in possession of an animal to comply with an order of the Director of [Human Services] **the Oregon Health Authority** under ORS 433.350, the [Director of Human Services] **director** or the authorized representative of the director may petition the circuit court of the county in which such animal is located for an order requiring such owner or person to comply with such order.

(2) The petition shall be verified and shall set forth the facts relative to the refusal to comply with the order. A copy of the petition shall be served upon the owner or person in possession of the

animal in the manner provided for service of summons in civil actions. Such owner or person in possession shall appear and answer the petition at a time and place set by the court in an order, a copy of which shall be served with the petition, directing the defendant to appear at such time and place, and to then and there show cause, if any, why an order directing compliance with the order of the [*Director of Human Services*] **director** should not be granted. The time set by the court for the hearing to show cause shall be made with due regard for the circumstances of the person or persons who have been subjected to the bite or scratch of the animal and whose health or life may be in jeopardy.

(3) If the owner or person in possession fails to appear or the court either with or without such appearance finds the allegations of the petition are true and the order of the [*Director of Human Services*] **director** is necessary under ORS 433.350, the court shall enter its order requiring the owner or person in possession of such animal to comply with the order of the [*Director of Human Services*] **director**.

(4) The sheriff of the county in which the animal is located shall execute such order by serving upon the owner or person in possession a copy thereof duly certified to by the clerk of the circuit court and by enforcing the provisions thereof.

SECTION 666. ORS 433.360 is amended to read:

433.360. (1) Whenever a case of animal rabies occurs, the fact shall be reported to the Director of [*Human Services*] **the Oregon Health Authority** and to the State Department of Agriculture immediately.

(2) The [*State Department of Agriculture in consultation with the Director of Human Services shall establish such quarantine under ORS chapter 596 as the State Department of Agriculture and the Director of Human Services may deem*] **department, in consultation with the Oregon Health Authority, shall establish a quarantine pursuant to ORS chapter 596 if the department and the authority find that a quarantine is necessary.**

(3) The [*State Department of Agriculture and the Director of Human Services*] **department and the authority** may contract with counties for the purpose of carrying out the provisions of ORS 433.350, 433.355 and subsection (2) of this section.

SECTION 667. ORS 433.365 is amended to read:

433.365. (1) A dog that has permanent canine teeth or that is six months of age or older must be inoculated against rabies, unless specifically exempted by rule of the [*Department of Human Services*] **Oregon Health Authority** or the State Department of Agriculture.

(2) Unless pursuant to conditions specified in ORS 430.357, any rules of the [*State Department of Agriculture or the Director of Human Services*] **department or the authority** with respect to inoculation shall:

(a) Not apply to animals brought temporarily into the state for periods of less than 30 days but may require that the animals be kept under strict supervision by the owners of the animals.

(b) Not apply to dogs or to any other animal specifically exempted from the inoculation requirement by rule of the [*Department of Human Services or the State Department of Agriculture*] **department or the authority**.

(3) The costs of all such required inoculations shall be borne by the owners of the animal.

SECTION 668. ORS 433.367 is amended to read:

433.367. The [*Department of Human Services*] **Oregon Health Authority** shall be responsible for development and coordination of vaccination clinics at sufficient and reasonable times at various locations throughout the state for the inoculation of dogs against rabies. Costs of vaccination shall be borne by the dog owner.

SECTION 669. ORS 433.370 is amended to read:

433.370. Every veterinarian inoculating an animal against rabies shall supply to the owner evidence of inoculation which shall consist of a certificate issued and signed by the veterinarian. The form of the certificate shall be prescribed by the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 670. ORS 433.375 is amended to read:

433.375. (1) The owner of the animal shall present by mail or otherwise the inoculation certificate, together with the fee fixed pursuant to ORS 433.380, if any, to the clerk of the county in which the owner resides.

(2) The county shall upon receipt of the fee and presentation of the certificate issue to the owner a serial-numbered tag, legibly identifying its expiration date as such date is determined in accordance with rules of the [Department of Human Services] **Oregon Health Authority** relating to intervals of inoculation. The tag shall be designed for and shall be attached to a collar or harness which shall be worn by the dog for which the tag and certificate is issued at all times when off or outside the premises of the owner. Whenever an original tag is lost, mutilated or destroyed, upon application and payment of the fee prescribed under ORS 433.380, if any, a replacement tag, to be dated, designed and worn as the original, shall be issued.

(3) No official of any county shall issue a license for a dog until the official has been shown a proper certification, or its equivalent, of a rabies inoculation.

(4) If the county files the certificate upon which a tag is issued, it shall be cross-referenced to the tag number. If the certificate is not filed, the county shall keep an appropriate record of the expiration date and number, if any, of the certificate cross-referenced to the tag number. Notwithstanding ORS 205.320 (1), a fee is not required for filing the certificate.

(5) Unexpired tags shall be honored in all counties when the animal is in transit or where the owner has established a new residence.

(6) The provisions of this section apply to a city, rather than a county, in a city which has a dog licensing program.

SECTION 671. ORS 433.407 is amended to read:

433.407. As used in ORS 433.407 to 433.423 unless the context requires otherwise:

(1) [*“Department” means the Department of Human Services*] **“Authority” means the Oregon Health Authority.**

(2) **“Health care facility”** means a facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapter 426 and 430.397 to 430.401 or ORS chapter 430.

(3) **“Worker”** means a person who is licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or 685 or ORS 682.216, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory as defined in ORS 438.010 [(1)], a firefighter, a law enforcement officer as defined in ORS 414.805, a corrections officer or a parole and probation officer.

SECTION 672. ORS 433.419 is amended to read:

433.419. When a local health department or the [Department of Human Services] **Oregon Health Authority** learns of a case or suspected case of an infectious disease which may have exposed a worker to risk of infection, the local health department or the [Department of Human Services] **authority** shall make every reasonable effort to notify the worker and employer of the exposure as soon as medically appropriate given the urgency of the disease or suspected disease. Notification shall include recommendations to the worker and employer that are medically appropriate.

SECTION 673. ORS 433.423 is amended to read:

433.423. (1) The [Department of Human Services] **Oregon Health Authority** shall adopt rules implementing ORS 433.407 to 433.423. Such rules shall include, but need not be limited to:

(a) The development of curriculum dealing with the exposure of workers to infectious diseases;

(b) Development and conduct of training programs for local health department personnel to prepare them to train workers about the subject of infectious diseases;

(c) Information on the manner in which infectious diseases are transmitted; and

(d) Guidelines that can assist workers and their employers in distinguishing between conditions in which such workers are or are not at risk with respect to infectious diseases.

(2) The rules adopted by the [Department of Human Services] **authority** shall require that implementation of ORS 433.407 to 433.423 be accomplished in such a manner as to protect the confidentiality of persons with infectious diseases and workers exposed to such persons.

SECTION 674. ORS 433.443 is amended to read:

433.443. (1)(a) During a public health emergency proclaimed under ORS 433.441, the Public Health Director may, as necessary to appropriately respond to the public health emergency:

(A) Adopt reporting requirements for and provide notice of those requirements to health care providers, institutions and facilities for the purpose of obtaining information directly related to the public health emergency;

(B) After consultation with appropriate medical experts, create and require the use of diagnostic and treatment protocols to respond to the public health emergency and provide notice of those protocols to health care providers, institutions and facilities;

(C) Order, or authorize local public health administrators to order, public health measures appropriate to the public health threat presented;

(D) Upon approval of the Governor, take other actions necessary to address the public health emergency and provide notice of those actions to health care providers, institutions and facilities, including public health actions authorized by ORS 431.264;

(E) Take any enforcement action authorized by ORS 431.262, including the imposition of civil penalties of up to \$500 per day against individuals, institutions or facilities that knowingly fail to comply with requirements resulting from actions taken in accordance with the powers granted to the Public Health Director under subparagraphs (A), (B) and (D) of this paragraph; and

(F) The authority granted to the Public Health Director under this section:

(i) Supersedes any authority granted to a local public health authority if the local public health authority acts in a manner inconsistent with guidelines established or rules adopted by the director under this section; and

(ii) Does not supersede the general authority granted to a local public health authority or a local public health administrator except as authorized by law or necessary to respond to a public health emergency.

(b) The authority of the Public Health Director to take administrative action, and the effectiveness of any action taken, under paragraph (a)(A), (B), (D), (E) and (F) of this subsection terminates upon the expiration of the proclaimed state of public health emergency, unless the actions are continued under other applicable law.

(2) Civil penalties under subsection (1) of this section shall be imposed in the manner provided in ORS 183.745. The Public Health Director must establish that the individual, institution or facility subject to the civil penalty had actual notice of the action taken that is the basis for the penalty. The maximum aggregate total for penalties that may be imposed against an individual, institution or facility under subsection (1) of this section is \$500 for each day of violation, regardless of the number of violations of subsection (1) of this section that occurred on each day of violation.

(3)(a) During a proclaimed state of public health emergency, the Public Health Director and local public health administrators shall be given immediate access to individually identifiable health information necessary to:

(A) Determine the causes of an illness related to the public health emergency;

(B) Identify persons at risk;

(C) Identify patterns of transmission;

(D) Provide treatment; and

(E) Take steps to control the disease.

(b) Individually identifiable health information accessed as provided by paragraph (a) of this subsection may not be used for conducting nonemergency epidemiologic research or to identify persons at risk for post-traumatic mental health problems, or for any other purpose except the purposes listed in paragraph (a) of this subsection.

(c) Individually identifiable health information obtained by the Public Health Director or local public health administrators under this subsection may not be disclosed without written authorization of the identified individual except:

(A) Directly to the individual who is the subject of the information or to the legal representative of that individual;

(B) To state, local or federal agencies authorized to receive such information by state or federal law;

(C) To identify or to determine the cause or manner of death of a deceased individual; or

(D) Directly to a health care provider for the evaluation or treatment of a condition that is the subject of a proclamation of a state of public health emergency issued under ORS 433.441.

(d) Upon expiration of the state of public health emergency, the Public Health Director or local public health administrators may not use or disclose any individually identifiable health information that has been obtained under this section. If a state of emergency that is related to the state of public health emergency has been declared under ORS 401.055, the Public Health Director and local public health administrators may continue to use any individually identifiable information obtained as provided under this section until termination of the state of emergency.

(4) As used in this section:

(a) "Covered entity" means:

(A) The Children's Health Insurance Program;

(B) The Family Health Insurance Assistance Program established under ORS 735.722;

(C) A health insurer that is an insurer as defined in ORS 731.106 and that issues health insurance as defined in ORS 731.162;

(D) The state medical assistance program; and

(E) A health care provider.

(b) "Health care provider" includes but is not limited to:

(A) A psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist;

(B) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;

(C) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;

(D) A dentist licensed under ORS chapter 679 or an employee of the dentist;

(E) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;

(F) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;

(G) An emergency medical technician certified under ORS chapter 682;

(H) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

(I) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;

(J) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;

(K) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(M) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(N) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the radiologic technologist;

(O) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the respiratory care practitioner;

(P) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

(Q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;

(R) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

(S) A health care facility as defined in ORS 442.015;

(T) A home health agency as defined in ORS 443.005;

(U) A hospice program as defined in ORS 443.850;

(V) A clinical laboratory as defined in ORS 438.010;

(W) A pharmacy as defined in ORS 689.005;

(X) A diabetes self-management program as defined in ORS 743A.184; and

(Y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(c) "Individual" means a natural person.

(d) "Individually identifiable health information" means any oral or written health information in any form or medium that is:

(A) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(i) The past, present or future physical or mental health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The past, present or future payment for the provision of health care to an individual.

(e) "Legal representative" means attorney at law, person holding a general power of attorney, guardian, conservator or any person appointed by a court to manage the personal or financial affairs of a person, or agency legally responsible for the welfare or support of a person.

(5) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

(6) The Public Health Director may request assistance in enforcing orders issued pursuant to this section from state or local law enforcement authorities. If so requested by the Public Health Director, state and local law enforcement authorities, to the extent resources are available, shall assist in enforcing orders issued pursuant to this section.

(7) If the [*Department of Human Services*] **Oregon Health Authority** adopts temporary rules to implement the provisions of this section, the rules adopted are not subject to the provisions of ORS 183.335 (6)(a). The [*department*] **authority** may amend temporary rules adopted pursuant to this subsection as often as necessary to respond to the public health emergency.

SECTION 675. ORS 433.452 is amended to read:

433.452. (1) If the Public Health Director or the local public health administrator reasonably believes a person within the jurisdiction of the director or the administrator may have been exposed to a communicable disease identified by rule of the [*Department of Human Services*] **Oregon Health Authority** to be a reportable disease or condition or a condition that is the basis for a state of public health emergency declared by the Governor as authorized by ORS 433.441, the person may be detained for as long as reasonably necessary for the director or administrator to convey information to the person regarding the communicable disease or condition and to obtain contact information, including but not limited to the person's residence and employment addresses, date of birth, telephone numbers and any other contact information required by the director or administrator.

(2) If a person detained under subsection (1) of this section refuses to provide the information requested, the director or administrator may impose a public health measure appropriate to the public health threat presented pursuant to ORS 433.035, 433.121 and 433.123.

SECTION 676. ORS 433.511 is amended to read:

433.511. Subject to available funds, the [*Department of Human Services*] **Oregon Health Authority** may establish a broad public information program to educate the public on indoor air pollutants, their identities, causes and effects, and on effective practical methods for preventing, detecting and correcting the causes of indoor air pollution.

SECTION 677. ORS 433.517 is amended to read:

433.517. Subject to available funds, the [*Department of Human Services*] **Oregon Health Authority** may conduct field investigations and epidemiological studies to quantify the extent of indoor air pollution levels and public exposure in Oregon. Field investigations shall be conducted in a manner that does not compete with the business of private contractors. Epidemiological studies may be conducted to look for the causes of illness and collect and analyze data to identify trends and health impacts, especially where national information on significant potential problems is lacking.

SECTION 678. ORS 433.521 is amended to read:

433.521. (1) Based upon the recommendations of the Indoor Air Pollution Task Force, the [*Department of Human Services*] **Oregon Health Authority** may establish indoor air quality standards for significant indoor air pollutants. If established, the standards:

- (a) Shall include an adequate margin of safety;
- (b) Shall be adequate to protect the population, including sensitive groups; and
- (c) May be revised as appropriate.

(2) If established, indoor air quality standards shall be at least for the following significant indoor air pollutants:

- (a) Particulate matter;
- (b) Aldehydes;
- (c) Radon;
- (d) Carbon monoxide;
- (e) Carbon dioxide;
- (f) Ozone; and
- (g) Water vapor.

(3) In developing the indoor air quality standards, the [*Department of Human Services*] **authority** shall consult with the Department of Environmental Quality, the Department of Consumer and Business Services and the Indoor Air Pollution Task Force.

(4) The standards established by the [*Department of Human Services*] **authority** shall not take effect before July 1, 1991. The [*Department of Human Services*] **authority** shall seek voluntary compliance with the standards.

SECTION 679. ORS 433.526 is amended to read:

433.526. (1) The [*Department of Human Services*] **Oregon Health Authority** may establish by rule a public recognition program for office workplaces, buildings and public areas that consistently meet the indoor air quality requirements of ORS 433.502 to 433.526, 455.445 and 468A.775 to 468A.785. Any workplace, building or public area that qualifies for such recognition may display a notice indicating that the building exceeds the requirements of Oregon's indoor clean air statutes.

(2) To qualify for recognition under this section, an office workplace, building or public area shall:

- (a) Comply with all applicable provisions of ORS 433.835 to 433.875;
- (b) Demonstrate a consistent pattern of compliance in meeting all indoor air quality standards and other requirements of ORS 433.502 to 433.526, 455.445 and 468A.775 to 468A.785; and
- (c) Demonstrate to the satisfaction of the [*Department of Human Services*] **authority** that all technically and economically practicable steps have been taken to minimize significant sources of indoor air pollution.

(3) The [*Department of Human Services*] **authority** by rule may establish a fee to be submitted by the owner or responsible party of a building, workplace or public area who requests certification under this section. The fee shall be an amount sufficient to pay the [*department's*] **authority's** costs in carrying out the provisions of this section.

SECTION 680. ORS 433.715 is amended to read:

433.715. No person having delivered merchandise, such as clothing, wearing apparel of every description, hair goods, brushes, rubber goods, books, mattresses, blankets, sheets, pillows or other kinds of bedding, to any person or institution at or thereafter taken to any place where any communicable disease exists or may exist, after the delivery of such merchandise, shall intermingle

the same with the goods for sale or offer the same for sale or sell the same, or receive any merchandise from any place or premises where any communicable disease exists or has existed, and intermingle such goods with other goods for sale or offer the same for sale or sell the same, until such goods have been thoroughly disinfected in accordance with the rules and regulations of the [Department of Human Services] **Oregon Health Authority**.

SECTION 681. ORS 433.750 is amended to read:

433.750. (1) The governing body of a county in which an outdoor mass gathering is to take place shall issue a permit upon application when the organizer demonstrates compliance with or the ability to comply with the health and safety rules governing outdoor mass gatherings to be regulated according to the anticipated crowd and adopted by the [Department of Human Services] **Oregon Health Authority**. The application shall include all of the following:

- (a) Name and address of the applicant.
- (b) Legal description of the place of the proposed gathering.
- (c) Date of the proposed gathering.
- (d) Estimated attendance at the proposed gathering.
- (e) Nature of the proposed gathering.

(f) Such other appropriate information as the county governing body may require in order to insure compliance with rules of the [Department of Human Services] **authority**.

(2) Notice of the application shall be sent by the county governing body to the county sheriff or county chief law enforcement officer, the county health officer and the chief of the fire district in which the gathering is to be held.

(3) Each officer receiving notice of the application under subsection (2) of this section who wishes to comment on the application shall submit such comment in writing to the county governing body not later than the hearing date. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed.

(4) The county governing body shall hold a public hearing on the issue of compliance with this section. Notice of the time and place of such hearing including a general explanation of the matter to be considered shall be published at least 10 calendar days before the hearing in a newspaper of general circulation in the county or, if there is none, it shall be posted in at least three public places in the county.

(5) Any decision of a county governing body on an application for a permit to hold an outdoor mass gathering may be appealed to a circuit court for the county as provided in ORS 34.020 to 34.100.

(6) A county governing body may charge permit applicants a fee reasonably calculated to reimburse the county for its reasonable and necessary costs in receiving, processing and reviewing applications for permits to hold outdoor mass gatherings. However, a fee authorized by this subsection shall not exceed \$5,000 and shall not be charged when the governing body finds, by a preponderance of the evidence presented to the governing body, that the applicant is unable to reimburse the governing body.

SECTION 682. ORS 433.760 is amended to read:

433.760. Notwithstanding any other provisions of law, the [Department of Human Services] **Oregon Health Authority** shall, in accordance with the provisions of ORS chapter 183, make rules regulated according to anticipated crowds with respect to health and safety at outdoor mass gatherings which provide for:

- (1) Adequate water supply, drainage and sewerage facilities;
- (2) Adequate toilet facilities;
- (3) Adequate refuse storage and disposal facilities;
- (4) Adequate food and sanitary food service, if supplied;
- (5) Adequate emergency medical facilities and communication systems;
- (6) Adequate fire protection; and
- (7) Adequate security personnel and traffic control.

SECTION 683. ORS 433.810 is amended to read:

433.810. The [Department of Human Services] **Oregon Health Authority** shall:

(1) Adopt rules necessary for the administration of ORS 433.800 to 433.830 including defining circumstances under which 433.800 to 433.815 and 433.825 shall apply. The [department] **authority** shall include input from the educational system, health care provider organizations and other interested parties when adopting rules or amending those rules.

(2) Develop or approve protocols for educational training as described in ORS 433.815, including the use of mechanisms for periodic retraining of individuals, and provide the protocols for educational training upon request to schools, health care professionals, parents or guardians of students or other interested parties.

SECTION 684. ORS 433.835, as amended by section 1, chapter 602, Oregon Laws 2007, is amended to read:

433.835. As used in ORS 433.835 to 433.875:

(1) "Cigar bar" means a business that:

(a) Has on-site sales of cigars as defined in ORS 323.500;

(b) Has a humidor on the premises;

(c) Allows the smoking of cigars on the premises but prohibits the smoking of all other tobacco products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010 and cigarillos as defined by the [Department of Human Services] **Oregon Health Authority** by rule;

(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;

(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;

(f) Does not offer video lottery games as authorized under ORS 461.217;

(g) Has a maximum seating capacity of 40 persons;

(h) Has a ventilation system that is certified by the assistant to the State Fire Marshal described in ORS 476.060 for the jurisdiction in which the cigar bar is located as adequate to remove the cigar smoke in the cigar bar and vents the smoke from the cigar bar in a manner that prevents the smoke from entering any other establishment; and

(i) Requires all employees to read and sign a document that explains the dangers of exposure to secondhand smoke.

(2) "Enclosed area" means all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling.

(3) "Place of employment" means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, vehicles that are operated in the course of an employer's business that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways. "Place of employment" does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility providing adult day care as defined in ORS 410.490.

(4) "Public place" means any enclosed area open to the public.

(5) "Smoke shop" means a business that:

(a) Is primarily engaged in the sale of tobacco products and smoking instruments, with at least 75 percent of the gross revenues of the business resulting from such sales;

(b) Prohibits persons under 18 years of age from entering the premises;

(c) Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting on the premises;

(d) Does not sell or offer on-premises consumption of alcoholic beverages; and

(e) Is a stand-alone business with no other businesses or residential property attached to the premises.

(6) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment.

SECTION 685. ORS 433.850, as amended by section 4, chapter 602, Oregon Laws 2007, is amended to read:

433.850. (1) An employer shall provide a place of employment that is free of tobacco smoke for all employees.

(2) Notwithstanding subsection (1) of this section:

(a) The owner or person in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which smoking is permitted.

(b) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.

(c) Smoking is permitted in a smoke shop.

(d) Smoking is permitted in a cigar bar that generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006.

(3) An employer, except in those places described in subsection (2) of this section, shall post signs that provide notice of the provisions of ORS 433.835 to 433.875.

SECTION 686. ORS 433.855, as amended by section 5, chapter 602, Oregon Laws 2007, is amended to read:

433.855. (1) The [*Department of Human Services*] **Oregon Health Authority**, in accordance with the provisions of ORS chapter 183:

(a) Shall adopt rules necessary to implement the provisions of ORS 433.835 to 433.875 and 433.990 (5);

(b) Shall be responsible for compliance with such rules; and

(c) May impose a civil penalty not to exceed the amount specified in ORS 433.990 (5) for each violation of a rule of the [*department*] **authority** applicable to ORS 433.845 or 433.850, to be collected in the manner provided in ORS 441.705 to 441.745. All penalties recovered shall be paid into the State Treasury and credited to the Tobacco Use Reduction Account established under ORS 431.832.

(2) In carrying out its duties under this section, the [*Department of Human Services*] **authority** is not authorized to require any changes in ventilation or barriers in any public place or place of employment. However, nothing in this subsection is intended to limit the [*authority of the department*] **power of the authority** to impose any requirements under any other provision of law.

(3) In public places which the [*Department of Human Services*] **authority** regularly inspects, the [*Department of Human Services*] **authority** shall check for compliance with the provisions of ORS 433.835 to 433.875 and 433.990 (5). In other public places and places of employment, the [*Department of Human Services*] **authority** shall respond in writing or orally by telephone to complaints, notifying the proprietor or person in charge of responsibilities of the proprietor or person in charge under ORS 433.835 to 433.875 and 433.990 (5). If repeated complaints are received, the [*Department of Human Services*] **authority** may take appropriate action to ensure compliance.

(4) When a county has received delegation of the duties and responsibilities under ORS 446.425 and 448.100, or contracted with the [*Department of Human Services*] **authority** under ORS 190.110, the county shall be responsible for enforcing the provisions of ORS 433.835 to 433.875 and 433.990 (5) [*that are applicable to those licensed facilities and shall have the same authority as the Department of Human Services for such enforcement*] **and shall have the same enforcement power as the authority.**

SECTION 687. ORS 433.860 is amended to read:

433.860. The [*Department of Human Services*] **Oregon Health Authority** or local board of health may institute an action in the circuit court of the county where the violation occurred to enjoin repeated violations of ORS 433.850.

SECTION 688. ORS 433.990, as amended by section 7, chapter 602, Oregon Laws 2007, is amended to read:

433.990. (1) Violation of ORS 433.004 or 433.008, 433.255, 433.260 or 433.715 is a Class A misdemeanor.

(2) Violation of ORS 433.010 is punishable, upon conviction, by imprisonment in the custody of the Department of Corrections for not more than three years.

(3) Violation of ORS 433.035 is punishable upon conviction by a fine of not less than \$10 nor more than \$100, or by imprisonment for not less than 10 days nor more than 30 days, or by both.

(4) Violation of ORS 433.131 is a Class D violation punishable by fines totaling not more than \$50 per day, not to exceed \$1,000 in any 30-day period.

(5) Violation of ORS 433.850 is a Class A violation punishable by a fine of not more than \$500 per day. Fines imposed against a single employer under this subsection may not exceed \$2,000 in any 30-day period.

(6) Violation of ORS 433.345 or 433.365 is a Class B violation. Failure to obey any lawful order of the Director of [*Human Services*] **the Oregon Health Authority** issued under ORS 433.350 is a Class C misdemeanor.

(7) Any organizer, as defined in ORS 433.735, violating ORS 433.745 is punishable, upon conviction, by a fine of not more than \$10,000.

SECTION 689. ORS 435.090 is amended to read:

435.090. (1) Goods of the class specified in ORS 435.010 shall be sold at wholesale or at retail in this state only if they:

(a) Specifically identify the manufacturer, date of manufacture or an expiration date and the distributor thereof by firm name and address on the container in which the goods are sold or are intended to be distributed. All such goods manufactured after December 31, 1994, shall bear an expiration date.

(b) Comply with the standards as to such goods, respecting grade and quality, prescribed by the [*Department of Human Services*] **Oregon Health Authority** under ORS 435.100.

(2) Relative to drugs or medicinal preparations intended or having special utility for the prevention of conception, each individual container manufactured for sale in Oregon must bear the date of manufacture or an expiration date. All such drugs or medicinal preparations manufactured after December 31, 1994, shall bear an expiration date.

SECTION 690. ORS 435.100 is amended to read:

435.100. (1) The [*Department of Human Services*] **Oregon Health Authority** shall adopt and promulgate from time to time and have jurisdiction over the establishing of such standards relating to and governing the articles and medicinal preparations mentioned in ORS 435.010 as may be deemed necessary by the [*department*] **authority** in the interest of disease prevention.

(2) The State Board of Pharmacy may adopt other rules to enforce and carry out the provisions of ORS 435.010 to 435.130 in cooperation with the [*department*] **authority**.

(3) The [*department*] **authority** shall cause to have published the brand names of all goods of the class specified in ORS 435.010 that comply with the standards prescribed under subsection (1) of this section.

SECTION 691. ORS 435.105 is amended to read:

435.105. In lieu of its own inspection program, the State Board of Pharmacy may enter into an agreement with the [*Department of Human Services*] **Oregon Health Authority** or a county or district board of health. The agreement shall authorize the [*department*] **authority** or the board to make inspections of the condom stock to determine that the stock consists only of brands that comply with standards promulgated under ORS 435.100 (1). The agreement shall include authority to enforce applicable rules of the State Board of Pharmacy and the [*department*] **authority** and such rules of the board shall be considered rules of the [*department*] **authority** or the county or district board of health.

SECTION 692. ORS 435.205 is amended to read:

435.205. (1) The [*Department of Human Services*] **Oregon Health Authority** and every county health department shall offer family planning and birth control services within the limits of available funds. Both agencies jointly may offer such services. The Director of [*Human Services*] **the**

Oregon Health Authority or a designee shall initiate and conduct discussions of family planning with each person who might have an interest in and benefit from such service. The [*Department of Human Services*] **authority** shall furnish consultation and assistance to county health departments.

(2) Family planning and birth control services may include interviews with trained personnel; distribution of literature; referral to a licensed physician for consultation, examination, medical treatment and prescription; and, to the extent so prescribed, the distribution of rhythm charts, the initial supply of a drug or other medical preparation, contraceptive devices and similar products.

(3) Any literature, charts or other family planning and birth control information offered under this section in counties in which a significant segment of the population does not speak English shall be made available in the appropriate foreign language for that segment of the population.

(4) In carrying out its duties under this section, and with the consent of the county governing body, any county health department may adopt a fee schedule for services provided by the county health department. The fees shall be reasonably calculated not to exceed costs of services provided and may be adjusted on a sliding scale reflecting ability to pay.

(5) The county health department shall collect fees according to the schedule adopted under subsection (4) of this section. Such fees may be used to meet the expenses of providing the services authorized by this section.

SECTION 693. ORS 435.225 is amended to read:

435.225. Any employee of the [*Department of Human Services*] **Oregon Health Authority** may refuse to accept the duty of offering family planning and birth control services to the extent that such duty is contrary to the personal or religious beliefs of the employee. However, such employee shall notify the immediate supervisor in writing of such refusal in order that arrangements may be made for eligible persons to obtain such information and services from another employee. Such refusal shall not be grounds for any disciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in employment, or for suspension from employment, or for any loss in pay or other benefits.

SECTION 694. ORS 435.254 is amended to read:

435.254. (1) A hospital providing care to a female victim of sexual assault shall:

(a) Promptly provide the victim with unbiased, medically and factually accurate written and oral information about emergency contraception;

(b) Promptly orally inform the victim of her option to be provided emergency contraception at the hospital; and

(c) If requested by the victim and if not medically contraindicated, provide the victim with emergency contraception immediately at the hospital, notwithstanding section 2, chapter 789, Oregon Laws 2003.

(2)(a) In collaboration with victim advocates, other interested parties and nonprofit organizations that provide intervention and support services to victims of sexual assault and their families, the [*Department of Human Services*] **Oregon Health Authority** shall develop, prepare and produce informational materials relating to emergency contraception for the prevention of pregnancy in victims of sexual assault for distribution to and use in all hospital emergency departments in the state, in quantities sufficient to comply with the requirements of this section.

(b) The Director of [*Human Services*] **the Oregon Health Authority**, in collaboration with community sexual assault programs and other relevant stakeholders, may approve informational materials developed, prepared and produced by other entities for the purposes of paragraph (a) of this subsection.

(c) All informational materials must:

(A) Be clearly written and easily understood in a culturally competent manner; and

(B) Contain an explanation of emergency contraception, including its use, safety and effectiveness in preventing pregnancy, including but not limited to the following facts:

(i) Emergency contraception has been approved by the United States Food and Drug Administration as an over-the-counter medication for women 18 years of age or older and is a safe and ef-

fective way to prevent pregnancy after unprotected sexual intercourse or after contraceptive failure, if taken in a timely manner.

(ii) Emergency contraception is more effective the sooner it is taken.

(iii) Emergency contraception will not disrupt an established pregnancy.

(3) The [department] **authority** shall respond to complaints of violations of ORS 435.256 in accordance with ORS 441.057.

(4) The [department] **authority** shall incorporate the requirements of this section in rules adopted pursuant to ORS 441.055 that prescribe the care to be given to patients at hospitals.

(5) The director shall adopt rules necessary to carry out the provisions of this section.

(6) Information required to be provided under subsection (1) of this section is medically and factually accurate if the information is verified or supported by the weight of research conducted in compliance with accepted scientific methods and based upon:

(a) Reports in peer-reviewed journals; or

(b) Information that leading professional organizations, such as the American College of Obstetricians and Gynecologists, and agencies with expertise in the field recognize as accurate and objective.

SECTION 695. ORS 435.256 is amended to read:

435.256. The [Department of Human Services] **Oregon Health Authority** may impose a civil penalty against a hospital for each violation of the rules adopted under ORS 435.254. A civil penalty imposed under this section may not exceed \$1,000 for each violation upon inspection or each substantiated complaint filed.

SECTION 696. ORS 437.010 is amended to read:

437.010. Any representative of a religious denomination, householder, nurse, parent, guardian or other person attending to, or in any way having knowledge of the existence of a case of pulmonary tuberculosis, including the affected person, must immediately report the fact to the [Department of Human Services] **Oregon Health Authority**. The names and addresses of all persons reported as having pulmonary tuberculosis shall be recorded [in the office of the department] **with the authority**.

SECTION 697. ORS 437.030 is amended to read:

437.030. The [Department of Human Services] **Oregon Health Authority** shall, upon receiving a report that any person has tuberculosis, make such investigation of the case as is necessary to determine whether or not the person reported has communicable tuberculosis. Upon finding that any person has communicable tuberculosis, the [department] **authority** shall exercise such control over the affected person and contacts with other persons as may be necessary for the protection of the public health, pursuant to its rules and regulations. In exercising such control over any person who has communicable tuberculosis the [department] **authority** may make such rules or orders governing such person's conduct as are necessary to prevent the spread of the disease.

SECTION 698. ORS 438.010 is amended to read:

438.010. As used in ORS 438.010 to 438.510, unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[(1)] (2) “Clinical laboratory” or “laboratory” means a facility where the microbiological, serological, chemical, hematological, immunohematological, immunological, toxicological, cytogenetical, exfoliative cytological, histological, pathological or other examinations are performed on materials derived from the human body, for the purpose of diagnosis, prevention of disease or treatment of patients by physicians, dentists and other persons who are authorized by license to diagnose or treat humans.

[(2)] (3) “Clinical laboratory specialty” or “laboratory specialty” means the examination of materials derived from the human body for the purpose of diagnosis and treatment of patients or assessment of health, employing one of the following sciences: Serology, microbiology, chemistry, hematology, immunohematology, immunology, toxicology, cytogenetics, exfoliative cytology, histology or pathology.

[(3)] (4) “Clinician” means a nurse practitioner licensed and certified by the Oregon State Board of Nursing, or a physician assistant licensed by the Oregon Medical Board.

[(4)] (5) “Custody chain” means the handling of specimens in a way that supports legal testimony to prove that the sample integrity and identification of the sample have not been violated, as well as the documentation describing those procedures from specimen collection to the final report.

[(5)] (6) “Dentist” means a person licensed to practice dentistry by the Oregon Board of Dentistry.

[(6)] “*Department*” means the *Department of Human Services*.]

(7) “Director of clinical laboratory” or “director” means the person who plans, organizes, directs and participates in any or all of the technical operations of a clinical laboratory, including but not limited to reviewing laboratory procedures and their results, training and supervising laboratory personnel, and evaluating the technical competency of such personnel.

(8) “Health screen testing” means tests performed for the purpose of identifying health risks, providing health information and referring the person being tested to medical care.

(9) “High complexity laboratory” means a facility that performs testing classified as highly complex in the specialties of microbiology, chemistry, hematology, diagnostic immunology, immunohematology, clinical cytogenetics, cytology, histopathology, oral pathology, pathology, radiobioassay and histocompatibility and that may also perform moderate complexity tests and waived tests.

(10) “High complexity test” means a procedure performed on materials derived from the human body that meet the criteria for this category of testing in the specialties of microbiology, chemistry, hematology, immunohematology, diagnostic immunology, clinical cytogenetics, cytology, histopathology, oral pathology, pathology, radiobioassay and histocompatibility as established by the [department] **authority**.

(11) “Laboratory evaluation system” means a system of testing clinical laboratory methods, procedures and proficiency by periodic performance and reporting on test specimens submitted for examination.

(12) “Moderate complexity laboratory” means a facility that performs testing classified as moderately complex in the specialties of microbiology, hematology, chemistry, immunohematology or diagnostic immunology and may also perform any waived test.

(13) “Moderate complexity test” means a procedure performed on materials derived from the human body that meet the criteria for this category of testing in the specialties of microbiology, hematology, chemistry, immunohematology or diagnostic immunology as established by the [department] **authority**.

(14) “Operator of a substances of abuse on-site screening facility” or “operator” means the person who plans, organizes, directs and participates in any or all of the technical and administrative operations of a substances of abuse on-site screening facility.

(15) “Owner of a clinical laboratory” means the person who owns the clinical laboratory, or a county or municipality operating a clinical laboratory or the owner of any institution operating a clinical laboratory.

(16) “Physician” means a person licensed to practice medicine by the Oregon Medical Board.

(17) “Physician performed microscopy procedure” means a test personally performed by a physician or other clinician during a patient’s visit on a specimen obtained during the examination of the patient.

(18) “Physician performed microscopy procedures” means a limited group of tests that are performed only by a physician or clinician.

(19) “Specimen” means materials derived from a human being or body.

(20) “Substances of abuse” means ethanol and controlled substances, except those used as allowed by law and as defined in ORS chapter 475 or as used in ORS 689.005.

(21) “Substances of abuse on-site screening facility” or “on-site facility” means a location where on-site tests are performed on specimens for the purpose of screening for the detection of substances of abuse.

(22) "Substances of abuse on-site screening test" or "on-site test" means a substances of abuse test that is easily portable and can meet the requirements of the federal Food and Drug Administration for commercial distribution or an alcohol screening test that meets the requirements of the conforming products list found in the United States Department of Transportation National Highway Traffic Safety Administration Docket No. 94-004 and meets the standards of the United States Department of Transportation Alcohol Testing Procedure, 49 C.F.R. part 40, in effect on October 23, 1999.

(23) "Waived test" means a procedure performed on materials derived from the human body that meet the criteria for this category of testing as established by the [department] authority.

SECTION 699. ORS 438.060 is amended to read:

438.060. Notwithstanding ORS 438.050, any person performing health screen testing must obtain a permit under ORS 438.150 (5). However, an employer providing health screen testing to employees of the employer is exempt from the applications of ORS 438.010, 438.130, 438.150 and this section if such employer contracts for the testing through a licensed physician, a clinical laboratory or a hospital, which is a permittee of the [Department of Human Services] **Oregon Health Authority** as provided in this section.

SECTION 700. ORS 438.070 is amended to read:

438.070. The [Department of Human Services] **Oregon Health Authority** shall establish by rule the qualifications and responsibilities of technical and clinical consultants, general and technical supervisors and testing personnel. A person is qualified to act as a technical or clinical consultant, a general or technical supervisor, or a testing person in a clinical laboratory if the person meets the requirements established by the [department] authority. Rules adopted under this section shall not be more stringent than comparable rules adopted under the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578; 42 U.S.C. 201 and 263a).

SECTION 701. ORS 438.110 is amended to read:

438.110. (1) The [Department of Human Services] **Oregon Health Authority** shall establish four levels of laboratory licenses as follows:

- (a) A high complexity laboratory license;
- (b) A moderate complexity laboratory license;
- (c) A physician performed microscopy laboratory license; and
- (d) A waived laboratory license.

(2) The [department] authority shall issue and renew licenses required under ORS 438.040 for any or all clinical laboratory specialties to the owners of clinical laboratories who demonstrate to the satisfaction of the [department] authority that:

(a) The clinical laboratory is in compliance with ORS 438.010 to 438.510 and the rules of the [department] authority adopted under ORS 438.450;

(b) The laboratory is adequately equipped to perform proficiently within the scope of its license;

(c) The clinical laboratory has facilities for retaining and does retain complete laboratory records for an appropriate length of time as the [department] authority by rule may require; and

(d) The clinical laboratory meets the standards of the [department] authority for safety, sanitary conditions, plumbing, ventilation, handling of specimens, maintenance of equipment and requirements of general hygiene to insure protection of the public health.

SECTION 702. ORS 438.120 is amended to read:

438.120. (1) In determining the specialties that are authorized to be performed in a clinical laboratory, the [Department of Human Services] **Oregon Health Authority** shall consider laboratory personnel, with particular emphasis on the qualifications of the director, laboratory equipment and any other relevant factors affecting the ability of the laboratory to perform different laboratory specialties.

(2) No laboratory shall be licensed to perform examinations in the fields of surgical pathology, autopsy pathology, exfoliative cytology, or immunohematology, [except as the Department of Human Services may establish exemptions from the requirements of this subsection in the field of immunohematology,] unless its director is a physician or dentist specifically qualified in these fields.

The authority may establish exemptions from the requirements of this subsection for the field of immunohematology.

(3) The list of waived tests, physician performed microscopy procedures and moderate and high complexity tests shall be established by the [department] **authority**.

SECTION 703. ORS 438.130 is amended to read:

438.130. (1) The application for a license for a clinical laboratory shall be made on forms provided by the [Department of Human Services] **Oregon Health Authority** and shall be executed by the owner or one of the owners or by an officer of the firm or corporation owning the clinical laboratory, or in the case of a county or municipality, by the public official responsible for operation of the laboratory, or in the case of an institution, by the administrator of the institution. The application shall contain the names of the owner, the director or directors of the clinical laboratory, the location and physical description of the clinical laboratory, the laboratory specialties for which a license is requested and such other information as the [department] **authority** may require.

(2)(a) The application shall be accompanied by an annual or biennial license fee to be established by the [department] **authority**. The fee shall be based on test volume, test complexity, the number of specialties performed and private laboratory accreditation. For each level of laboratory testing, the fee shall be not more than 100 percent of the corresponding fee charged by the federal laboratory certification program known as the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578, 42 U.S.C. 201 and 263a) in effect on July 1, 1999. The fee for substance of abuse screening laboratories not certified under the Clinical Laboratory Improvement Amendments of 1988 shall be comparable to the clinical laboratory fee established under this section.

(b) The [department] **authority** may establish prorated fees for licenses issued for a year or less and when there is a change in the laboratory's owner, director or address. A prorated license fee shall be issued to a laboratory accredited by an organization recognized by the [department] **authority**.

(3) Unless sooner voided, suspended or revoked, all licenses issued under this section expire on June 30 of the one-year or two-year cycle following the date of issuance or on such date as may be specified by [department] **authority** rule. Licenses issued under this section shall be renewable in the manner prescribed by the [department] **authority**.

(4) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges, the fees and charges established under this section shall not exceed the cost of administering the regulatory program of the [Department of Human Services] **authority** pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the [department's] **authority's** budget, as the budget may be modified by the Emergency Board.

SECTION 704. ORS 438.140 is amended to read:

438.140. (1) A license issued to the owner of a clinical laboratory shall show on its face the names of the owners and directors, the location of the laboratory and the clinical laboratory specialties authorized under the license. The license shall be displayed at all times in a prominent place in the laboratory.

(2) A license issued to the owner of a clinical laboratory is not transferable. The license of the laboratory is voided 30 days after a change in its director if it has only one director or if all directors change or a change in the ownership or in the location of the laboratory. In case of death of a director, immediate notification to the Director of [Human Services] **the Oregon Health Authority** or a designee who shall be empowered to issue a special temporary permit of 30 days' duration issued to a designated substitute director is required. If a license is voided or a special temporary permit is issued under this section, a new license application, accompanied by the nonrefundable license fee prescribed in ORS 438.130, shall be filed with the [Department of Human Services] **authority**.

SECTION 705. ORS 438.150 is amended to read:

438.150. (1) In addition to the license of a clinical laboratory required by ORS 438.040, the [Department of Human Services] **Oregon Health Authority** may issue a temporary permit valid for a

period, to be determined by the [department] **authority**, from the date of issuance in any or all clinical laboratory specialties upon payment of the respective required fees as described in ORS 438.130 (2).

(2) In issuing the temporary permit, the [department] **authority** may require that:

(a) Plans for compliance with applicable laws and rules be submitted with the application for the temporary permit;

(b) During the period in which the temporary permit is in effect periodic reports be submitted on the progress of the plans for compliance; and

(c) Special temporary provisions specified by the [department] **authority** upon application of the temporary permit be maintained for the protection of the public.

(3) If at any time the [department] **authority** determines that the clinical laboratory can no longer operate in a manner that protects the public health and safety or that the requirements imposed under subsection (2) of this section are not being maintained, the [department] **authority** shall cancel the temporary permit.

(4) One renewal of the temporary permit may be granted if deemed to be in the best interest of public health by the [department] **authority**. The fee for renewal is the respective required fee as described in ORS 438.130 (2).

(5) The [department] **authority** may issue permits for health screen testing.

(6) The [department] **authority** by rule shall specify:

(a) Appropriate quality assurance procedures;

(b) Personnel qualifications;

(c) Standards for counseling and referral of persons being tested;

(d) Tests a health testing service may conduct;

(e) The procedure for applying for a permit; and

(f) The procedure for reporting to the [department] **authority** the location of all health screening facilities.

(7) The [department] **authority** by rule may specify the maximum length of time a health screen testing service may remain in one location.

SECTION 706. ORS 438.160 is amended to read:

438.160. Subject to ORS chapter 183, the [Department of Human Services] **Oregon Health Authority** may refuse to issue or renew the license, or may suspend or revoke the license or health screen testing permit, of a clinical laboratory if it finds that the owner or director has:

(1) Intentionally made false statements on an application for a clinical laboratory license or any other documents required by the [department] **authority**, or made any misrepresentation in seeking to obtain or retain a license.

(2) Demonstrated incompetence as defined pursuant to regulations promulgated after public hearing.

(3) Intentionally falsified any report.

(4) Referred a specimen for examination to a nonlicensed or an unlicensed clinical laboratory in this state unless the laboratory is exempt from the application of ORS 438.010 to 438.510.

(5) Misrepresented the scope of laboratory service offered by the clinical laboratory or the clinical laboratory specialties authorized by the license.

(6) Rendered a report on clinical laboratory work actually performed in another clinical laboratory without designating the name and address of the clinical laboratory in which the test was performed.

(7) Knowingly had professional connection with or permitted the use of the name of the licensed clinical laboratory or its director by a clinical laboratory that is required to but has not obtained a license.

(8) Failed to perform or cause to be performed within the time specified analysis of test samples as authorized by ORS 438.320, or failed to report on the results of such analysis within the specified time.

(9) Failed to permit within a reasonable time the entry or inspection authorized by ORS 438.310.

(10) Failed to continue to meet requirements of ORS 438.110 and 438.120.

(11) Violated any provision of ORS 438.010 to 438.510.

SECTION 707. ORS 438.210 is amended to read:

438.210. A person is qualified to act as a laboratory director of a clinical laboratory if:

(1) The person is a pathologist certified in clinical or anatomical pathology by a national organization or organizations recognized by the [*Department of Human Services*] **Oregon Health Authority**, or is a physician who possesses qualifications equivalent to those required for such certification;

(2) The person is a physician who possesses special qualifications that enable the person to perform as a laboratory director, or is directing a laboratory on January 1, 1970;

(3) The person has an earned degree of Doctor of Science or Doctor of Philosophy, or an acceptable degree as determined by the [*department*] **authority**, from an accredited college or university, with a major in the chemical, physical, or biological sciences and possesses special qualifications as described in the administrative rules of the [*department*] **authority** that enable the person to perform as a laboratory director;

(4) The person is a member of a group of five or more physicians who operate on November 4, 1993, a laboratory performing work only on their patients and is the member designated by the group to be the director; or

(5) The person was responsible for the direction of a clinical laboratory for at least 12 months within the five years preceding January 1, 1970, and has had at least two years of pertinent clinical laboratory experience, as determined by the [*department*] **authority**.

SECTION 708. ORS 438.310 is amended to read:

438.310. (1) The [*Department of Human Services*] **Oregon Health Authority** or its authorized representative may:

(a) At reasonable times enter the premises of a clinical laboratory licensed or subject to being licensed under ORS 438.010 to 438.510 to inspect the facilities, methods, procedures, materials, staff, equipment, laboratory results and records of the clinical laboratory.

(b) Require the owner or director to submit reports on the operations and procedures of the laboratory.

(c) Require the owner or director to submit initial laboratory findings indicative of communicable disease as defined by law or by rule. Each report shall include the name of the person from whom the specimen was obtained, if the name was reported to the laboratory, and the name and address of the physician for whom such examination or test was made. Such reports shall not be construed as constituting a diagnosis nor shall any laboratory making such report be held liable under the laws of this state for having violated a trust or confidential relationship.

(2) The Director of [*Human Services*] **the Oregon Health Authority** or a designee, the [*department*] **authority**, or any employee thereof, shall not disclose information contained in reports on communicable diseases submitted to the [*department*] **authority** under subsection (1) of this section except as such information is made available to employees of the [*department*] **authority** and to local health officers for purposes of administering the public health laws of this state. However, information contained in such reports may be used in compiling statistical and other data in which persons are not identified by name or otherwise.

(3) The [*department*] **authority** shall by rule set standards for the recognition of private laboratory accrediting organizations whose standards meet or exceed federal standards. A laboratory that is accredited by a private laboratory accrediting organization recognized by the [*department*] **authority** under this section may submit proof of such accreditation to the [*department*] **authority**. Upon receipt of such proof, the [*department*] **authority** shall issue a license pursuant to ORS 438.130.

SECTION 709. ORS 438.320 is amended to read:

438.320. (1) The [*Department of Human Services*] **Oregon Health Authority** shall institute a laboratory evaluation system, as defined in ORS 438.010, and shall make such rules as are necessary to insure quality control of laboratory work.

- (2) As part of this system, the [department] **authority** may require each laboratory to:
- (a) Participate in on-site inspection and testing;
 - (b) Analyze test samples submitted by the [department] **authority** prior to, during or subsequent to the inspection; and
 - (c) Contract with, at the laboratory's own expense, [a department-approved] **an authority-approved** source of test samples for such test samples to be submitted periodically to the laboratory and to be returned to that source for grading after testing. The test results shall be made available to the [department] **authority**.

(3) The procedures under subsection (2) of this section shall be referred to as external quality control. The samples are to be tested by regularly assigned personnel using routine methods. The test samples shall be confined to the specialty of the laboratory as indicated on the license. A specified time shall be allowed for such testing and reporting of the results and shall be the time required under conditions of normal operation.

(4) In addition to external quality control, each clinical laboratory shall establish an internal laboratory quality control system pursuant to rules of the [department] **authority** including but not necessarily limited to the testing of reference or control sera and other biological samples, verifying concurrent calibration standards and control charts recordings, and reporting on its control system as required by the [department] **authority**.

SECTION 710. ORS 438.420 is amended to read:

438.420. When the control or release of a case contact or carrier of a communicable disease is dependent on laboratory findings, the health officer may require such findings to be obtained by a clinical laboratory licensed by the [Department of Human Services] **Oregon Health Authority**.

SECTION 711. ORS 438.435 is amended to read:

438.435. (1) In addition to duties which a clinical laboratory may perform under ORS 438.010 to 438.510, a laboratory is authorized to perform appropriate tests, examinations or analyses on materials derived from the human body for the purpose of detecting substances of abuse in the body. All laboratories performing the tests, examinations or analyses must be licensed under the provisions of ORS 438.010 to 438.510 and must employ qualified technical personnel to perform the tests, examinations and analyses.

(2) In order to perform such tests, examinations or analyses, the laboratory may examine specimens submitted by persons other than those described in ORS 438.430 (1) and shall report the result of any test, examination or analysis to the person who submitted the specimen. When the substance of abuse test is for nonmedical employment or pre-employment purposes, and a written request is provided, the test result shall be reported to the person from whom the specimen was originally obtained.

(3) When the specimen of a person tested for substances of abuse is submitted to the laboratory and the test result is positive, the laboratory shall perform a confirming test which has been designated by rule of the [Department of Human Services] **Oregon Health Authority** as the best available technology for use to determine whether or not the substance of abuse identified by the first test is present in the specimen prior to reporting the test results.

(4) The [department] **authority** by rule shall set standards for special category laboratories that engage only in the initial testing for substances of abuse in the body, including registration procedures for such laboratories and personnel.

(5) The operator of a substances of abuse on-site screening facility may use substances of abuse on-site screening tests if the test results are not for use in diagnosing or preventing disease and are not for use by physicians, dentists or other licensed health care professionals in treating humans. Any entity using the test shall pay a yearly filing fee, not to exceed \$50, and file a registration form as provided by rule of the [department] **authority** that:

- (a) States the current name and address of the entity, the telephone number of the entity, if any, and the name of a contact individual at each on-site facility operated by the entity; and
- (b) Certifies that:

(A) The tests are being administered according to the federal Food and Drug Administration package insert that accompanies the test;

(B) The tests are being administered according to the instructions of the manufacturer;

(C) Custody chain procedures are being followed;

(D) Operators of the substances of abuse on-site screening facility are trained in the use of the substances of abuse on-site screening tests by the manufacturer; and

(E) If the substances of abuse on-site screening facility obtains a positive test result on a specimen and the entity indicates that the test result is to be used to deny or deprive any person of employment or any benefit, or may otherwise result in adverse employment action, the same specimen shall be submitted to a clinical laboratory licensed under ORS 438.110 and 438.150 or an equivalent out-of-state facility and the presence of a substance of abuse confirmed prior to release of the on-site test result.

(6) The [department] **authority** by rule shall set reasonable standards for the screening by correctional agencies of inmates within state and local correctional facilities and offenders on parole, probation or post-prison supervision for substances of abuse. The standards shall include, but not be limited to, the establishment of written procedures and protocols, the qualifications and training of individuals who perform screening tests, the approval of specific technologies and the minimum requirements for record keeping, quality control and confirmation of positive screening results.

(7) If an initial test by a special category laboratory under subsection (4) of this section or a special category screening under subsection (6) of this section shows a result indicating the presence of a substance of abuse in the body, a confirmatory test shall be conducted in a licensed clinical laboratory if the results are to be used to deprive or deny any person of any employment or benefit. If a screening test of an inmate of a state or local correctional facility is positive for a substance of abuse, the inmate may be held in a secure facility pending the outcome of the confirmatory test. If the confirmatory test is positive, the inmate may be held in a secure facility pending the outcome of any hearing to determine what action will be taken.

(8) If any test for substances of abuse is performed outside this state the results of which are to be used to deprive or deny any person any employment or any benefit, the person desiring to use the test shall have the burden to show that the testing procedure used meets or exceeds the testing standards of this state.

SECTION 712. ORS 438.440 is amended to read:

438.440. All moneys received by the [Department of Human Services] **Oregon Health Authority** under ORS 438.010 to 438.510 and 438.990 shall be credited to the Public Health Account and shall be used for payment of the expenses of the [department] **authority** in administering the provisions of ORS 438.010 to 438.510 and 438.990.

SECTION 713. ORS 438.450 is amended to read:

438.450. The [Department of Human Services] **Oregon Health Authority** shall make such rules as are necessary for carrying out ORS 438.010 to 438.510 in accordance with ORS 183.330.

SECTION 714. ORS 438.605 is amended to read:

438.605. As used in ORS 438.605 to 438.620, 448.280 and 448.285:

(1) "Accrediting authority" means the official accrediting authority for the Oregon environmental laboratory accreditation program comprised of the Director of [Human Services or] **the Oregon Health Authority** or designee, the Director of the Department of Environmental Quality or designee and the Director of Agriculture or designee.

(2) ["Department" means the Department of Human Services] **'Authority' means the Oregon Health Authority.**

(3) "Environmental laboratory" means a fixed location or mobile facility that performs chemical, physical, radiological, microbiological or biological testing of environmental samples or the collection of environmental samples.

(4) "Environmental testing" means laboratory analysis of any matter, pollutant, contaminant or hazardous substance subject to regulation pursuant to:

(a) Rules adopted or enforced by the [*Department of Human Services*] **Oregon Health Authority**, the Department of Environmental Quality or the State Department of Agriculture; or

(b) A federal environmental statute or regulation administered or enforced by the United States Environmental Protection Agency.

SECTION 715. ORS 438.610 is amended to read:

438.610. (1) The [*Department of Human Services*] **Oregon Health Authority**, in concurrence with the accrediting authority, may adopt by rule standards for any laboratory seeking accreditation and performing environmental testing for a fee or for determining compliance with environmental statutes, rules or regulations.

(2) In developing standards under subsection (1) of this section, the [*department*] **authority** shall cooperate with and may seek advice from the United States Environmental Protection Agency and any other state or federal agency that may have adopted rules or regulations for environmental monitoring.

(3) The standards adopted under this section may address testing and sampling procedures or methods, record keeping, disposal or retention of testing materials or samples, or any other practice related to work performed by an environmental laboratory.

SECTION 716. ORS 438.615 is amended to read:

438.615. The [*Department of Human Services*] **Oregon Health Authority**, in concurrence with the accrediting authority, shall establish by rule and implement an environmental laboratory accreditation program. The standards for accreditation may be equivalent to, but may not exceed, standards adopted by national accreditation programs.

SECTION 717. ORS 438.620 is amended to read:

438.620. (1) In conjunction with the environmental laboratory accreditation program established under ORS 438.615, the [*Department of Human Services*] **Oregon Health Authority** may establish and collect a fee for laboratory accreditation under the program. A fee imposed under this section shall not exceed the cost of administering the program.

(2) Prior to imposing the fee under subsection (1) of this section, the [*Department of Human Services*] **authority** shall obtain the approval of the Oregon Department of Administrative Services and report to the appropriate legislative committee.

(3) All moneys collected by the [*Department of Human Services*] **Oregon Health Authority** under this section shall be deposited in a dedicated account of the [*department*] **authority**. Such moneys are continuously appropriated to the [*Department of Human Services*] **Oregon Health Authority** to pay the costs of the [*Department of Human Services*] **authority**, the State Department of Agriculture and the Department of Environmental Quality in administering the environmental laboratory accreditation program established under ORS 438.615.

SECTION 718. ORS 440.420 is amended to read:

440.420. (1) The Medicaid Upper Payment Limit Account is established in the State Treasury separate and distinct from the General Fund. Moneys in the account are continuously appropriated to the Oregon Department of Administrative Services for health-related programs.

(2) The [*Department of Human Services*] **Oregon Health Authority** shall transfer to the Medicaid Upper Payment Limit Account that portion of the payment received by the [*department*] **authority** from health districts in this state under the Proportionate Share Incentive Adjustment State Plan Amendment to the State Medicaid Plan and under intergovernmental agreements with the health districts that is attributable to the federal funds portion of the total payment made by the [*department*] **authority** to the health districts during the biennium.

SECTION 719. ORS 441.017 is amended to read:

441.017. For purposes of licensing health care facilities, health care facility, as defined in ORS 442.015, does not include:

(1) Facilities established by ORS 430.306 to 430.335 for treatment of alcoholism or drug abuse; and

(2) Community mental health [*and*] **programs or** development disabilities programs established under ORS 430.610 to 430.695.

SECTION 720. ORS 441.020 is amended to read:

441.020. (1) Licenses for *[health care facilities including long term care facilities, as defined in ORS 442.015, shall be obtained from the Department of Human Services]* **health care facilities, except long term facilities as defined in ORS 442.015, must be obtained from the Oregon Health Authority.**

(2) Licenses for long term care facilities must be obtained from the Department of Human Services.

[(2)] (3) Applications shall be upon such forms and shall contain such information as the **authority or the** department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.055.

[(3)] (4) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of *[the Department of Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607 to 431.619.]*:

(a) The Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under ORS 441.015 to 441.063; or

(b) The Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under ORS 441.015 to 441.063 and 431.607 to 431.619.

[(4)] (5) Except as otherwise provided in subsection (5) of this section, for hospitals with:

- (a) Fewer than 26 beds, the annual license fee shall be \$750.
- (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.
- (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.
- (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
- (e) Two hundred or more beds, the annual license fee shall be \$3,400.

[(5)] (6) For long term care facilities with:

- (a) Fewer than 16 beds, the annual license fee shall be up to \$120.
- (b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.
- (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.
- (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to

\$450.

(e) Two hundred beds or more, the annual license fee shall be up to \$580.

[(6)] (7) For special inpatient care facilities with:

- (a) Fewer than 26 beds, the annual license fee shall be \$750.
- (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.
- (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.
- (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
- (e) Two hundred beds or more, the annual license fee shall be \$3,400.

[(7)] (8) For ambulatory surgical centers, the annual license fee shall be \$1,000.

[(8)] (9) For birthing centers, the annual license fee shall be \$250.

[(9)] (10) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.

[(10)] (11) During the time the licenses remain in force holders thereof are not required to pay inspection fees to any county, city or other municipality.

[(11)] (12) Any health care facility license may be indorsed to permit operation at more than one location. In such case the applicable license fee shall be the sum of the license fees which would be applicable if each location were separately licensed.

[(12)] (13) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

SECTION 721. ORS 441.022 is amended to read:

441.022. In determining whether to license a health care facility *[pursuant to ORS 441.025, the Department of Human Services]* **or long term care facility pursuant to ORS 441.025, the Oregon**

Health Authority or the Department of Human Services shall consider only factors relating to the health and safety of individuals to be cared for therein and *[shall]* **may** not consider whether the health care facility **or long term care facility** is or will be a governmental, charitable or other nonprofit institution or whether *[it]* **the facility** is or will be an institution for profit.

SECTION 722. ORS 441.025 is amended to read:

441.025. (1) **Upon receipt of an application to operate a health care facility and the license fee, the Oregon Health Authority shall issue a license if it finds that the applicant and health care facility comply with ORS 441.015 to 441.063 and 441.085 and the rules of the authority provided that the authority does not receive within the time specified a certificate of non-compliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.**

[(1)] (2) Upon receipt of an application **to operate a long term care facility** and the license fee, the Department of Human Services shall issue a license if *[it]* **the department** finds that the applicant and *[health]* **long term** care facility comply with ORS 441.015 to 441.063, 441.085 and 441.087 and the rules of the department provided that it does not receive within the time specified a certificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

[(2)] (3) Each license, unless sooner suspended or revoked, shall be renewable annually for the calendar year upon payment of the fee, provided that a certificate of noncompliance has not been issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

[(3)] (4) Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable.

[(4)] (5) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the **authority or the** department.

[(5)] (6) No license shall be issued or renewed for any health care facility or health maintenance organization that offers or proposes to develop a new health service unless a certificate of need has first been issued therefor pursuant to ORS 442.340 (1987 Replacement Part) or approval has been granted under ORS 442.315 or section 9, chapter 1034, Oregon Laws 1989.

[(6)] (7) No license shall be issued or renewed for any skilled nursing facility or intermediate care facility, as defined in ORS 442.015, unless the applicant has included in the application the name and such other information as may be necessary to establish the identity and financial interests of any person who has incidents of ownership in the facility representing an interest of 10 percent or more thereof. If the person having such interest is a corporation, the name of any stockholder holding stock representing an interest in the facility of 10 percent or more shall also be included in the application. If the person having such interest is any other entity, the name of any member thereof having incidents of ownership representing an interest of 10 percent or more in the facility shall also be included in the application.

[(7)] (8) A license may be denied to any applicant for a license or renewal thereof or any stockholder of any such applicant who has incidents of ownership in the **health care facility or long term care** facility representing an interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for the facility, if during the five years prior to the application the applicant or any stockholder of the applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has divested that interest after receiving *[written notice from the department of intention]* **from the authority or the department written notice that the authority or the department intends** to suspend or revoke the license or to decertify the *[home]* **facility** from eligibility to receive payments for services provided under this section.

[(8)] (9) *[No license shall be issued or renewed for any]* **The Department of Human Services may not issue or renew a license for a** long term care facility, as defined in ORS 442.015, unless the applicant has included in the application the identity of any person who has incident of ownership in the **long term care** facility who also has a financial interest in any pharmacy, as defined in ORS 689.005.

SECTION 723. ORS 441.030 is amended to read:

441.030. (1) The **Oregon Health Authority or the** Department of Human Services, pursuant to ORS 479.215, shall deny, suspend or revoke a license in any case where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

[(2) The department may deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085 or 441.087 or the rules or minimum standards adopted under ORS 441.015 to 441.063, 441.085 or 441.087.]

[(3) The department may suspend or revoke a license issued under ORS 441.025 for failure to comply with a department order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087, 441.162 or 441.166 or the rules adopted under ORS 441.015 to 441.063, 441.084 to 441.087, 441.162 or 441.166, or for failure to pay a civil penalty imposed under ORS 441.170 or 441.710.]

(2) The authority may:

(a) Deny, suspend or revoke a health care facility's license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063 and 441.085 or the rules or minimum standards adopted under ORS 441.015 to 441.063 and 441.085; or

(b) Suspend or revoke a license issued under ORS 441.025 for failure to comply with an authority order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.085, 441.162 or 441.166 or the rules adopted under ORS 441.015 to 441.063, 441.085, 441.162 or 441.166, or for failure to pay a civil penalty imposed under ORS 441.170.

(3) The department may:

(a) Deny, suspend or revoke a long term care facility's license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085 or 441.087 or the rules or minimum standards adopted under ORS 441.015 to 441.063, 441.085 or 441.087.

(b) Suspend or revoke a long term care facility's license issued under ORS 441.025 for failure to comply with a department order arising from a long term care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063 or 441.084 to 441.087 or the rules adopted under ORS 441.015 to 441.063 or 441.084 to 441.087, or for failure to pay a civil penalty imposed under ORS 441.710.

[(4) (c) [The department may] Order a long term care facility licensed under ORS 441.025 to restrict the admission of patients when the department finds an immediate threat to patient health and safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to 441.063 or 441.084 to 441.087 and the rules adopted under ORS 441.015 to 441.063 or 441.084 to 441.087.

[(5) (4) Any long term care facility that has been ordered to restrict the admission of patients pursuant to subsection [(4)] (3)(c) of this section shall post a notice of the restriction, provided by the department, on all doors providing ingress to and egress from the facility, for the duration of the restriction.

SECTION 724. ORS 441.037 is amended to read:

441.037. (1) When the **Oregon Health Authority or the** Department of Human Services proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be in accordance with ORS chapter 183.

SECTION 725. ORS 441.050 is amended to read:

441.050. (1) **Notwithstanding the existence and pursuit of any other remedy, the Oregon Health Authority may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a health care facility or health maintenance organization without a license.**

(2) Notwithstanding the existence and pursuit of any other remedy, the Department of Human Services may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a [health care facility or health maintenance organization] **long term care facility** without a license.

SECTION 726. ORS 441.055 is amended to read:

441.055. (1) [The Department of Human Services shall adopt such rules with respect to the different types of health care facilities as may be designed to further the accomplishment of the purposes of ORS 441.015 to 441.087.] **To fulfill the purposes of ORS 441.015 to 441.087:**

(a) **The Oregon Health Authority shall adopt rules with respect to the different types of health care facilities; and**

(b) **The Department of Human Services shall adopt rules with respect to long term care facilities.**

(2) No rules shall require any specific food so long as the necessary nutritional food elements are present.

[2)] (3) Rules describing care given in health care facilities [shall] **or long term care facilities must** include, but **need** not be limited to, standards of patient care or patient safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records. The [department may in its discretion] **authority or the department may** accept certificates by the Joint Commission on Accreditation of Hospitals or the Committee on Hospitals of the American Osteopathic Association as evidence of compliance with acceptable standards.

[3)] (4) The governing body of each health **care facility or long term** care facility shall be responsible for the operation of the facility, the selection of the medical staff and the quality of care rendered in the facility. The governing body shall:

(a) Ensure that all health care personnel for whom state licenses, registrations or certificates are required are currently licensed, registered or certified;

(b) Ensure that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Ensure that procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to [assure] **ensure** their conformity to applicable law;

(d) Ensure that physicians admitted to practice in the facility are organized into a medical staff in such a manner as to effectively review the professional practices of the facility for the purposes of reducing morbidity and mortality and for the improvement of patient care; and

(e) Ensure that a physician is not denied medical staff membership or privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another health care facility.

[4)] (5) The physicians organized into a medical staff pursuant to subsection [(3)] (4) of this section shall propose medical staff bylaws to govern the medical staff. The bylaws shall include, but not be limited to the following:

(a) Procedures for physicians admitted to practice in the facility to organize into a medical staff pursuant to subsection [(3)] (4) of this section;

(b) Procedures for ensuring that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or remove officers and other persons to carry out medical staff activities with accountability to the governing body;

(d) Procedures for ensuring that physicians admitted to practice in the facility are currently licensed by the Oregon Medical Board;

(e) Procedures for ensuring that the facility's procedures for granting, restricting and terminating privileges are followed and that such procedures are regularly reviewed to assure their conformity to applicable law; and

(f) Procedures for ensuring that physicians provide services within the scope of the privileges granted by the governing body.

[(5)] (6) Amendments to medical staff bylaws shall be accomplished through a cooperative process involving both the medical staff and the governing body. Medical staff bylaws shall be adopted, repealed or amended when approved by the medical staff and the governing body. Approval shall not be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold approval if such repeal, amendment or adoption is mandated by law, statute or regulation or is necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the failure to approve would subvert the stated moral or ethical purposes of the institution.

[(6)] (7) The Oregon Medical Board may appoint one or more physicians to conduct peer review for a health care facility upon request of such review by all of the following:

- (a) The physician whose practice is being reviewed.
- (b) The executive committee of the health care facility's medical staff.
- (c) The governing body of the health care facility.

[(7)] (8) The physicians appointed pursuant to subsection [(6)] (7) of this section shall be deemed agents of the Oregon Medical Board, subject to the provisions of ORS 30.310 to 30.400 and shall conduct peer review. Peer review shall be conducted pursuant to the bylaws of the requesting health care facility.

[(8)] (9) Any person serving on or communicating information to a peer review committee shall not be subject to an action for damages for action or communications or statements made in good faith.

[(9)] (10) All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the peer review committee in connection with a peer review are confidential pursuant to ORS 192.501 to 192.505 and 192.690 and all data is privileged pursuant to ORS 41.675.

[(10)] (11) Notwithstanding subsection [(9)] (10) of this section, a written report of the findings and conclusions of the peer review shall be provided to the governing body of the health care facility who shall abide by the privileged and confidential provisions set forth in subsection [(9)] (10) of this section.

[(11)] (12) Procedures for peer review established by subsections [(6) to (10)] (7) to (11) of this section are exempt from ORS chapter 183.

[(12)] (13) [The department] **The authority** shall adopt by rule standards for rural hospitals, as defined in ORS 442.470, that specifically address the provision of care to postpartum and newborn patients so long as patient care is not adversely affected.

[(13)] (14) For purposes of this section, "physician" has the meaning given the term in ORS 677.010.

SECTION 727. ORS 441.057 is amended to read:

441.057. (1) Rules adopted [by the Department of Human Services] pursuant to ORS 441.055 shall include procedures for the filing of complaints as to the standard of care in any health **care facility or long term** care facility and provide for the confidentiality of the identity of any complainant.

(2) [No] **A health care facility or a long term** care facility, or person acting in the interest of the facility, [shall] **may not** take any disciplinary or other adverse action against any employee who in good faith brings evidence of inappropriate care or any other violation of law or rules to the attention of the proper authority solely because of the employee's action as described in this subsection.

(3) Any employee who has knowledge of inappropriate care or any other violation of law or rules shall utilize established reporting procedures of the health **care facility or long term** care facility administration before notifying [the department] **the Department of Human Services, Oregon Health Authority** or other state agency of the alleged violation, unless the employee believes that patient health or safety is in immediate jeopardy or the employee makes the report to the department **or the authority** under the confidentiality provisions of subsection (1) of this section.

(4) The protection of health **care facility or long term** care facility employees under subsection (2) of this section shall commence with the reporting of the alleged violation by the employee to the administration of the health **care facility or long term** care facility or to the department, **authority** or other state agency pursuant to subsection (3) of this section.

(5) Any person suffering loss or damage due to any violation of subsection (2) of this section has a right of action for damages in addition to other appropriate remedy.

(6) The provisions of this section do not apply to a nursing staff, as defined in ORS 441.172, who claims to be aggrieved by a violation of ORS 441.174 committed by a hospital.

SECTION 728. ORS 441.060 is amended to read:

441.060. (1) The **Oregon Health Authority and the** Department of Human Services shall make or cause to be made such inspections as *[it may]* **the authority or the department** deem necessary.

(2) The *[Department of Human Services]* **authority and the department** may prescribe by rule that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, either prior to or after receiving a certificate of need pursuant to ORS 442.340 (1987 Replacement Part), if required, submit plans and specifications therefor to the **authority or the** department for preliminary inspection and approval or recommendations with respect to compliance with the rules authorized by ORS 441.055 and 443.420 and for compliance with National Fire Protection Association standards when the facility is also to be Medicare or Medicaid certified.

(3) The **authority or the** department may require by rule payment of a fee for project review services at a variable rate, dependent on total project cost.

(4) For health care facilities, the *[department]* **authority** shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program.

(5) **For long term care facilities and residential care facilities, the department shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program.** The fee for project review of residential care facilities shall equal two-thirds that required of health care facilities.

(6) The **authority or the** department may also conduct an on-site review of projects as a prerequisite to licensure of new facilities, major renovations and expansions. The **authority and the** department shall, at least annually, with the advice of **the** facilities covered by *[this]* **the** review, present proposed rule changes regarding facility design and construction to such agencies for their consideration.

(7) *[The department]* **The authority** shall *[also]* publish a state submissions guide for health *[and residential]* care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies.

(8) **The department shall publish a state submissions guide for long term care facility and residential care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies.**

SECTION 729. ORS 441.062 is amended to read:

441.062. (1) In conducting inspections for the purpose of licensing health **care facilities and long term** care facilities under ORS 441.020, the **Oregon Health Authority and the** Department of Human Services shall avoid unnecessary facility disruption by coordinating inspections performed by the **authority or the** department with inspections performed by other federal, state and local agencies that have responsibility for health care facility **or long term care facility** licensure.

(2) Whenever possible, the **authority and the** department shall avoid duplication of inspections by accepting inspection reports or surveys prepared by other state agencies that have responsibility for health **care facility or long term** care facility licensure for purposes of the inspection required for licensure.

(3) The **authority and the** department shall adopt *[all]* rules necessary to implement this section.

SECTION 730. ORS 441.082 is amended to read:

441.082. (1) The [Department of Human Services] **Oregon Health Authority** shall adopt by rule standards and a system of registration for every organ procurement organization, tissue bank and eye bank doing business in this state.

(2) An organ procurement organization, tissue bank or eye bank may not do business in this state unless it has registered with the [department] **authority**.

(3) Each organ procurement organization, tissue bank and eye bank shall provide to the [department] **authority** at least every three years current documentation of designation, certification and inspection as evidence of compliance with national standards and requirements under federal law.

(4) The [department] **authority** may impose a civil penalty not to exceed \$1,000 against an organ procurement organization, tissue bank or eye bank doing business in this state for failure to:

- (a) Register with the [department] **authority**;
- (b) Report loss of designation, accreditation or certification within 60 days of the loss; or
- (c) Supply the [department] **authority** with requested current documentation of designation, certification and inspection.

(5) Civil penalties under this section shall be imposed in the manner provided under ORS 183.745.

SECTION 731. ORS 441.085 is amended to read:

441.085. (1) The [Department of Human Services] **Oregon Health Authority** may by rule establish classifications and descriptions for [the various types of] health care facilities that are licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463, **except long term care facilities as defined in ORS 442.015.**

(2) **The Department of Human Services may by rule establish classifications and descriptions for long term care facilities that are licensed under ORS 441.015 to 441.087 and 441.525 to 441.595.**

[2)] (3) [A health care facility licensed by] **A health care facility licensed by the authority and a long term care facility licensed by** the department shall neither assume a descriptive title nor be represented under any descriptive title other than the classification title established by the **authority or the** department and under which [it] **the facility** is licensed.

SECTION 732. ORS 441.094 is amended to read:

441.094. (1) No officer or employee of a hospital licensed by the [Department of Human Services] **Oregon Health Authority** that has an emergency department may deny to a person an appropriate medical screening examination within the capability of the emergency department, including ancillary services routinely available to the emergency department, to determine whether a need for emergency medical services exists.

(2) No officer or employee of a hospital licensed by the [Department of Human Services] **authority** may deny to a person diagnosed by an admitting physician as being in need of emergency medical services the emergency medical services customarily provided at the hospital because the person is unable to establish the ability to pay for the services.

(3) Nothing in this section is intended to relieve a person of the obligation to pay for services provided by a hospital.

(4) A hospital that does not have physician services available at the time of the emergency shall not be in violation of this section if, after a reasonable good faith effort, a physician is unable to provide or delegate the provision of emergency medical services.

(5) All prepaid capitated health service contracts executed by the [Department of Human Services] **authority** and private health maintenance organizations and managed care organizations shall include a provision that encourages a managed care plan to establish agreements with hospitals in the plan's service area for payment of emergency screening examinations.

(6) As used in subsections (1) and (2) of this section, "emergency medical services" means medical services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide care of a woman in her

labor where delivery is imminent if the hospital is so equipped and, if the hospital is not equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

SECTION 733. ORS 441.164 is amended to read:

441.164. Upon request of a hospital, the [*Department of Human Services*] **Oregon Health Authority** may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital.

SECTION 734. ORS 441.166 is amended to read:

441.166. (1) When a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse or certified nursing assistant to work overtime.

(2) A hospital may not require a registered nurse, licensed practical nurse or certified nursing assistant to work:

(a) Beyond the agreed-upon shift;
(b) More than 48 hours in any hospital-defined work week; or
(c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require an additional hour of work beyond the 12 hours if:

(A) A staff vacancy for the next shift becomes known at the end of the current shift; or
(B) There is a potential harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(3)(a) Time spent in required meetings or receiving education or training shall be included as hours worked for purposes of subsection (2) of this section.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (2) of this section.

(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer shall be included as hours worked for purposes of subsection (2) of this section.

(4) The provisions of this section do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan;

(b) In emergency circumstances identified by the [*Department of Human Services*] **Oregon Health Authority** by rule; or

(c) If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in ORS 441.162 and is unable to obtain replacement staff in a timely manner.

SECTION 735. ORS 441.170 is amended to read:

441.170. (1) The [*Department of Human Services*] **Oregon Health Authority** may impose civil penalties in the manner provided in ORS 183.745 or suspend or revoke a license of a hospital for a violation of any provision of ORS 441.162 or 441.166. The [*department*] **authority** shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for any violation of ORS 441.162 or 441.166 when there is a reasonable belief that safe patient care has been or may be negatively impacted. A civil penalty imposed under this subsection may not exceed \$5,000. Each violation of a nursing staff plan shall be considered a separate violation. Any license that is suspended or revoked under this subsection shall be suspended or revoked as provided in ORS 441.030.

(2) The [*department*] **authority** shall maintain for public inspection records of any civil penalties or license suspensions or revocations imposed on hospitals penalized under subsection (1) of this section.

(3) The [*department*] **authority** shall conduct an annual random audit of not less than seven percent of all hospitals in this state solely to verify compliance with the requirements of ORS 441.162, 441.166 and 441.192. Surveys made by private accrediting organizations may not be used in

lieu of the audit required under this subsection. The [*department*] **authority** shall compile and maintain for public inspection an annual report of the audit conducted under this subsection.

(4) The costs of the audit required under subsection (3) of this section may be paid out of funds from licensing fees paid by hospitals under ORS 441.020.

SECTION 736. ORS 441.180 is amended to read:

441.180. (1) A hospital shall post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178 and 441.192 in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed \$500. Civil penalties under this section shall be imposed by the [*Department of Human Services*] **Oregon Health Authority** in the manner provided by ORS 183.745.

SECTION 737. ORS 441.630 is amended to read:

441.630. As used in ORS 441.630 to 441.680 and 441.995:

(1) "Abuse" means:

(a) Any physical injury to a resident of a long term care facility which has been caused by other than accidental means.

(b) Failure to provide basic care or services, which failure results in physical harm or unreasonable discomfort or serious loss of human dignity.

(c) Sexual contact with a resident caused by an employee, agent or other resident of a long term care facility by force, threat, duress or coercion.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another person.

(e) Verbal or mental abuse as prohibited by federal law.

(f) Corporal punishment.

(g) Involuntary seclusion for convenience or discipline.

(2) "Abuse complaint" means any oral or written communication to the department, one of its agents or a law enforcement agency alleging abuse.

(3) "Department" means the Department of Human Services or a designee of the department.

(4) "Facility" means a long term care facility, as defined in ORS 442.015.

(5) "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.

(6) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Licensed practical nurse or registered nurse.

(c) Employee of the Department of Human Services, [*county health department, community mental health and developmental disabilities programs*] **a community developmental disabilities program** or a long term care facility or person who contracts to provide services to a long term care facility.

(d) Employee of the Oregon Health Authority, county health department or community mental health program.

[*(d)*] (e) Peace officer.

[*(e)*] (f) Member of the clergy.

[*(f)*] (g) Licensed clinical social worker.

[*(g)*] (h) Physical, speech and occupational therapists.

[*(h)*] (i) Legal counsel for a resident or guardian or family member of the resident.

SECTION 738. ORS 441.705 is amended to read:

441.705. As used in ORS 441.705 to 441.745:

(1) "Direct patient care or feeding" means any care provided directly to or for any patient related to that patient's physical, medical and dietary well-being as defined by rules of [*the Department of Human Services*.]:

(a) **The Department of Human Services when the facility is a long term care facility, as defined in ORS 442.015, or a residential care facility, residential training facility or residential training home, as those terms are defined in ORS 443.400; and**

(b) **The Oregon Health Authority if the facility is a residential treatment facility or a residential treatment home, as defined in ORS 443.400.**

(2) "Person" means a licensee [*under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463, or a person whom the Director of Human Services finds should be so licensed but is not, but does not include any employee of such licensee or person*] **of a long term care facility, a residential care facility, a residential training facility, a residential treatment facility, a residential training home or a residential treatment home, or an unlicensed person whom the Director of Human Services finds should be licensed to operate a long term care facility, a residential care facility, a residential training facility or a residential training home, or an unlicensed person whom the Director of the Oregon Health Authority finds should be licensed to operate a residential treatment facility or residential treatment home. "Person" does not mean an employee of a licensee or unlicensed person whom the Director of Human Services or the Director of the Oregon Health Authority finds should be licensed.**

(3) "Staff to patient ratio" means the number and training of persons providing direct patient care as defined in rules of the [*department*.]:

(a) **Department if the facility is a long term care facility, a residential care or residential training facility or a residential training home; or**

(b) **Authority if the facility is a residential treatment facility or a residential treatment home.**

SECTION 739. ORS 441.710 is amended to read:

441.710. (1) In addition to any other liability or penalty provided by law, the Director of Human Services may impose a civil penalty on a person for any of the following:

(a) Violation of any of the terms or conditions of a license issued under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 for a long term care facility, as defined in ORS 442.015.

(b) Violation of any rule or general order of the Department of Human Services that pertains to a long term care facility.

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

(d) Violation of ORS 441.605 or of rules required to be adopted under ORS 441.610.

(e) Violation of ORS 443.880 or 443.881 **if the facility is a residential care facility, residential training facility or residential training home.**

(2) In addition to any other liability or penalty provided by law, the Director of the Oregon Health Authority may impose a civil penalty on a person for a violation of ORS 441.880 or 441.881 if the facility is a residential treatment facility or a residential treatment home.

[2] (3) [*A civil penalty may not be imposed under this section*] **The Director of Human Services may not impose a penalty under subsection (1) of this section** for violations other than those involving direct patient care or feeding, an adequate staff to patient ratio, sanitation involving direct patient care or a violation of ORS 441.605 or 443.880 or 443.881 or of the rules required to be adopted by ORS 441.610 unless a violation is found on two consecutive surveys of [*the*] a long term care facility. The Director **of Human Services** in every case shall prescribe a reasonable time for elimination of a violation:

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

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

(4) The Director of the Oregon Health Authority may not impose a penalty under subsection (2) of this section for violations other than those involving direct patient care or feeding, an adequate staff to patient ratio, sanitation involving direct patient care or a violation of ORS 443.880 or 443.881. The Director of the Oregon Health Authority in every case shall prescribe a reasonable time for elimination of a violation:

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

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

SECTION 740. ORS 441.712 is amended to read:

441.712. (1) Any civil penalty under ORS 441.710 shall be imposed in the manner provided by ORS 183.745.

(2) Notwithstanding ORS 183.745, 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 of Human Services.*]:

(a) The Director of Human Services if the facility is a long term care facility, residential care facility, residential training facility or residential training home; or

(b) The Director of the Oregon Health Authority if the facility is a residential treatment facility or residential treatment home.

SECTION 741. ORS 441.715 is amended to read:

441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under ORS 441.710 **(1) and the Director of the Oregon Health Authority by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under ORS 441.710 (2).** However, the civil penalty may not exceed \$500 for each violation, except as otherwise provided in ORS 441.637 and 441.995.

(b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed \$500 per day.

(2) The penalties assessed under subsection (1) of this section [*shall*] **may** not exceed \$6,000 in the aggregate or as otherwise required by federal law with respect to a single long term care facility within any 90-day period.

SECTION 742. ORS 441.720 is amended to read:

441.720. A civil penalty imposed under ORS 441.710 may be remitted or reduced upon such terms and conditions as **the Director of the Oregon Health Authority or** the Director of Human Services considers proper and consistent with the public health and safety.

SECTION 743. ORS 441.750 is amended to read:

441.750. (1) Any hospital which treats as a patient a person under 18 years of age because the person has attempted to commit suicide:

(a) Shall cause that person to be provided with information and referral to in-patient or out-patient community resources, crisis intervention or other appropriate intervention by the patient's attending physician, hospital social work staff or other appropriate staff.

(b) Shall report statistical information to the [*Department of Human Services*] **Oregon Health Authority** about the person described in this subsection but is not required to report the name of the person.

(2) Any disclosure authorized by this section or any unauthorized disclosure of information or communications made privileged and confidential by this section shall not in any way abridge or destroy the confidential or privileged character thereof except for the purposes for which any authorized disclosure is made. Any person making a disclosure authorized by this section shall not be liable therefor, notwithstanding any contrary provisions of law.

(3) No physician, hospital or hospital employee shall be held criminally or civilly liable for action pursuant to this section, provided the physician, hospital or hospital employee acts in good faith on probable cause and without malice.

SECTION 744. ORS 441.755 is amended to read:

441.755. (1) The [*Department of Human Services*] **Oregon Health Authority** shall prescribe a form to be used by hospitals to make the report required by ORS 441.750 (1)(b) and shall prescribe the frequency of such reports.

(2) The report form may include the name of the hospital reporting, the date of birth, race and sex of person described in subsection (1) of this section, the suicide method used by the person and known prior attempts in the past 12 months.

(3) The [*department*] **authority** shall compile the results from the reports and report the results to the public.

SECTION 745. ORS 441.815, as amended by section 8, chapter 602, Oregon Laws 2007, is amended to read:

441.815. (1) As used in this section, "hospital" has the meaning given the term in ORS 442.015.

(2) The administrator or person in charge of a hospital may not permit a person to smoke tobacco:

(a) In the hospital; or

(b) Within 10 feet of a doorway, open window or ventilation intake of the hospital.

(3) The Director of [*Human Services*] **the Oregon Health Authority** may impose a civil penalty of not more than \$500 per day on a person for violation of subsection (2) of this section. Civil penalties imposed against a person under this subsection may not exceed \$2,000 in any 30-day period. Civil penalties imposed under this subsection shall be imposed in the manner provided by ORS 183.745.

(4) The [*Department of Human Services*] **Oregon Health Authority** may adopt rules necessary for the administration of this section.

SECTION 746. ORS 441.990, as amended by section 9, chapter 602, Oregon Laws 2007, is amended to read:

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

(2) Any person who willfully prevents, interferes with, or attempts to impede in any way the work of any duly authorized representative of the Department of Human Services in the lawful carrying out of the provisions of ORS 441.087 (1) is guilty of a Class C misdemeanor.

(3) The removal of the notice required by ORS 441.030 [(5)] (4) by any person other than an official of the department is a Class C misdemeanor.

SECTION 747. ORS 442.011 is amended to read:

442.011. (1) There is created in the [*Department of Human Services*] **Oregon Health Authority** the Office for Oregon Health Policy and Research. The Administrator of the Office for Oregon Health Policy and Research shall be appointed by the Governor and the appointment shall be subject to Senate confirmation in the manner prescribed in ORS 171.562 and 171.565. The administrator shall be an individual with demonstrated proficiency in planning and managing programs with complex public policy and fiscal aspects such as those involved in the [*Oregon Health Plan*] **medical assistance program**. Before making the appointment, the Governor must advise the President of the Senate and the Speaker of the House of Representatives of the names of at least three finalists and shall consider their recommendation in appointing the administrator.

(2) In carrying out the responsibilities and duties of the administrator, the administrator shall consult with and be advised by the Oregon Health Policy [*Commission and the Oregon Health Fund*] Board.

SECTION 748. ORS 442.011, as amended by section 15, chapter 697, Oregon Laws 2007, is amended to read:

442.011. (1) There is created in the [*Department of Human Services*] **Oregon Health Authority** the Office for Oregon Health Policy and Research. The Administrator of the Office for Oregon Health Policy and Research shall be appointed by the Governor and the appointment shall be subject to Senate confirmation in the manner prescribed in ORS 171.562 and 171.565. The administrator shall be an individual with demonstrated proficiency in planning and managing programs with complex public policy and fiscal aspects such as those involved in the [*Oregon Health Plan*] **medical assistance program**. Before making the appointment, the Governor must advise the President of the Senate and the Speaker of the House of Representatives of the names of at least three finalists and shall consider their recommendation in appointing the administrator.

(2) In carrying out the responsibilities and duties of the administrator, the administrator shall consult with and be advised by the Oregon Health Policy [*Commission*] **Board**.

SECTION 749. ORS 442.015 is amended to read:

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

(1) “Acquire” or “acquisition” means obtaining equipment, supplies, components or facilities by any means, including purchase, capital or operating lease, rental or donation, with intention of using such equipment, supplies, components or facilities to provide health services in Oregon. When equipment or other materials are obtained outside of this state, acquisition is considered to occur when the equipment or other materials begin to be used in Oregon for the provision of health services or when such services are offered for use in Oregon.

(2) “Adjusted admission” means the sum of all inpatient admissions divided by the ratio of inpatient revenues to total patient revenues.

(3) “Affected persons” has the same meaning as given to “party” in ORS 183.310.

(4) “Ambulatory surgical center” means a facility that performs outpatient surgery not routinely or customarily performed in a physician’s or dentist’s office, and is able to meet health facility licensure requirements.

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

(6) “Budget” means the projections by the hospital for a specified future time period of expenditures and revenues with supporting statistical indicators.

(7) “Case mix” means a calculated index for each hospital, based on financial accounting and case mix data collection as set forth in ORS 442.425, reflecting the relative costliness of that hospital’s mix of cases compared to a state or national mix of cases.

[(8) “*Commission*” means the Oregon Health Policy Commission.]

[(9) “*Department*” means the Department of Human Services of the State of Oregon.]

[(10)] (8) “Develop” means to undertake those activities that on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable state law, in relation to the offering of such a health service.

[(11) “*Director*” means the Director of Human Services.]

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

[(13)] (10) “Freestanding birthing center” means a facility licensed for the primary purpose of performing low risk deliveries.

[(14)] (11) “Governmental unit” means the state, or any county, municipality or other political subdivision, or any related department, division, board or other agency.

[(15)] (12) “Gross revenue” means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges and other operating revenue. “Gross revenue” does not include contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

[(16)(a)] (13)(a) “Health care facility” means a hospital, a long term care facility, an ambulatory surgical center, a freestanding birthing center or an outpatient renal dialysis facility.

(b) “Health care facility” does not mean:

(A) An establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Department of Human Services or the Department of Corrections; or

(B) An establishment furnishing primarily domiciliary care.

[(17)] (14) “Health maintenance organization” or “HMO” means a public organization or a private organization organized under the laws of any state that:

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

(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

(i) Usual physician services;

(ii) Hospitalization;

(iii) Laboratory;

(iv) X-ray;

(v) Emergency and preventive services; and

(vi) Out-of-area coverage;

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

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

[(18)] (15) “Health services” means clinically related diagnostic, treatment or rehabilitative services, and includes alcohol, drug or controlled substance abuse and mental health services that may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

[(19)] (16) “Hospital” means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for patients with mental illness or to provide treatment in special inpatient care facilities.

[(20)] (17) “Institutional health services” means health services provided in or through health care facilities and includes the entities in or through which such services are provided.

[(21)] (18) “Intermediate care facility” means a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services above the level of room and board that can be made available to them only through institutional facilities.

[(22)] (19) “Long term care facility” means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of Human Services, to provide treatment for two or more unrelated patients. “Long term care facility” includes skilled nursing facilities and intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

[(23)] (20) “Major medical equipment” means medical equipment that is used to provide medical and other health services and that costs more than \$1 million. “Major medical equipment” does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician’s office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act.

[(24)] (21) “Net revenue” means gross revenue minus deductions from revenue.

[25] (22) “New hospital” means a facility that did not offer hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services. “New hospital” also includes any replacement of an existing hospital that involves a substantial increase or change in the services offered.

[26] (23) “New skilled nursing or intermediate care service or facility” means a service or facility that did not offer long term care services on a regular basis by or through the facility within the prior 12-month period and is initiating or proposing to initiate such services. “New skilled nursing or intermediate care service or facility” also includes the rebuilding of a long term care facility, the relocation of buildings that are a part of a long term care facility, the relocation of long term care beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

[27] (24) “Offer” means that the health care facility holds itself out as capable of providing, or as having the means for the provision of, specified health services.

[28] (25) “Operating expenses” means the sum of daily hospital service expenses, ambulatory service expenses, ancillary expenses and other operating expenses, excluding income taxes.

[29] (26) “Outpatient renal dialysis facility” means a facility that provides renal dialysis services directly to outpatients.

[30] (27) “Person” means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation, of a state.

[31] (28) “Skilled nursing facility” means a facility or a distinct part of a facility, that is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation of individuals who are injured or sick or who have disabilities.

[32] (29) “Special inpatient care facility” means a facility with permanent inpatient beds and other facilities designed and utilized for special health care purposes, including but not limited to a rehabilitation center, a college infirmary, a chiropractic facility, a facility for the treatment of alcoholism or drug abuse, an inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the *Department of Human Services* **Oregon Health Authority**, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

[33] (30) “Total deductions from gross revenue” or “deductions from revenue” means reductions from gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts and adjustments and other such revenue deductions. The deduction shall be net of the offset of restricted donations and grants for indigent care.

SECTION 750. ORS 442.120 is amended to read:

442.120. In order to provide data essential for health planning programs:

(1) The Office for Oregon Health Policy and Research may request, by July 1 of each year, each general hospital to file with the office ambulatory surgery and inpatient discharge abstract records covering all patients discharged during the preceding calendar year. The ambulatory surgery and inpatient discharge abstract record for each patient must include the following information, and may include other information deemed necessary by the office for developing or evaluating statewide health policy:

- (a) Date of birth;
- (b) Sex;
- (c) Zip code;
- (d) Inpatient admission date or outpatient service date;
- (e) Inpatient discharge date;
- (f) Type of discharge;
- (g) Diagnostic related group or diagnosis;
- (h) Type of procedure performed;

- (i) Expected source of payment, if available;
- (j) Hospital identification number; and
- (k) Total hospital charges.

(2) By July 1 of each year, the office may request from ambulatory surgical centers licensed under ORS 441.015 ambulatory surgery discharge abstract records covering all patients admitted during the preceding year. Ambulatory surgery discharge abstract records must include information similar to that requested from general hospitals under subsection (1) of this section.

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

(4) Subject to prior approval of the Oregon [*Department of Administrative Services*] **Health Policy Board** and a report to the Emergency Board, if the Legislative Assembly is not in session, prior to adopting the fee, and within the budget authorized by the Legislative Assembly as the budget may be modified by the Emergency Board, the fee established under subsection (3) of this section may not exceed the cost of abstracting and compiling the records.

(5) The office may specify by rule the form in which the records are to be submitted. If the form adopted by rule requires conversion from the form regularly used by a hospital, reasonable costs of such conversion shall be paid by the office.

(6) Abstract records must include a patient identifier that allows for the statistical matching of records over time to permit public studies of issues related to clinical practices, health service utilization and health outcomes. Provision of such a patient identifier must not allow for identification of the individual patient.

(7) In addition to the records required in subsection (1) of this section, the office may obtain abstract records for each patient that identify specific services, classified by International Classification of Disease Code, for special studies on the incidence of specific health problems or diagnostic practices. However, nothing in this subsection shall authorize the publication of specific data in a form that allows identification of individual patients or licensed health care professionals.

(8) The office may provide by rule for the submission of records for enrollees in a health maintenance organization from a hospital associated with such an organization in a form the office determines appropriate to the office's needs for such data and the organization's record keeping and reporting systems for charges and services.

SECTION 751. ORS 442.315 is amended to read:

442.315. (1) Any new hospital or new skilled nursing or intermediate care service or facility not excluded pursuant to ORS 441.065 shall obtain a certificate of need from the [*Department of Human Services*] **Oregon Health Authority** prior to an offering or development.

(2) The [*department*] **authority** shall adopt rules specifying criteria and procedures for making decisions as to the need for the new services or facilities.

(3)(a) An applicant for a certificate of need shall apply to the [*department*] **authority** on forms provided for this purpose by [*department*] **authority** rule.

(b) An applicant shall pay a fee prescribed as provided in this section. Subject to the approval of the Oregon Department of Administrative Services, the [*Department of Human Services*] **authority** shall prescribe application fees, based on the complexity and scope of the proposed project.

(4) The [*Department of Human Services*] **authority** shall be the decision-making authority for the purpose of certificates of need.

(5)(a) An applicant or any affected person who is dissatisfied with the proposed decision of the [*department*] **authority** is entitled to an informal hearing in the course of review and before a final decision is rendered.

(b) Following a final decision being rendered by the [*department*] **authority**, an applicant or any affected person may request a reconsideration hearing pursuant to ORS chapter 183.

(c) In any proceeding brought by an affected person or an applicant challenging [a department] **an authority** decision under this subsection, the [department] **authority** shall follow procedures consistent with the provisions of ORS chapter 183 relating to a contested case.

(6) Once a certificate of need has been issued, it may not be revoked or rescinded unless it was acquired by fraud or deceit. However, if the [department] **authority** finds that a person is offering or developing a project that is not within the scope of the certificate of need, the [department] **authority** may limit the project as specified in the issued certificate of need or reconsider the application. A certificate of need is not transferable.

(7) Nothing in this section applies to any hospital, skilled nursing or intermediate care service or facility that seeks to replace equipment with equipment of similar basic technological function or an upgrade that improves the quality or cost-effectiveness of the service provided. Any person acquiring such replacement or upgrade shall file a letter of intent for the project in accordance with the rules of the [department] **authority** if the price of the replacement equipment or upgrade exceeds \$1 million.

(8) Except as required in subsection (1) of this section for a new hospital or new skilled nursing or intermediate care service or facility not operating as a Medicare swing bed program, nothing in this section requires a rural hospital as defined in ORS 442.470 (5)(a)(A) and (B) to obtain a certificate of need.

(9) Nothing in this section applies to basic health services, but basic health services do not include:

- (a) Magnetic resonance imaging scanners;
- (b) Positron emission tomography scanners;
- (c) Cardiac catheterization equipment;
- (d) Megavoltage radiation therapy equipment;
- (e) Extracorporeal shock wave lithotriptors;
- (f) Neonatal intensive care;
- (g) Burn care;
- (h) Trauma care;
- (i) Inpatient psychiatric services;
- (j) Inpatient chemical dependency services;
- (k) Inpatient rehabilitation services;
- (L) Open heart surgery; or
- (m) Organ transplant services.

(10) In addition to any other remedy provided by law, whenever it appears that any person is engaged in, or is about to engage in, any acts that constitute a violation of this section, or any rule or order issued by the [department] **authority** under this section, the [department] **authority** may institute proceedings in the circuit courts to enforce obedience to such statute, rule or order by injunction or by other processes, mandatory or otherwise.

(11) As used in this section, "basic health services" means health services offered in or through a hospital licensed under ORS chapter 441, except skilled nursing or intermediate care nursing facilities or services and those services specified in subsection (9) of this section.

SECTION 752. ORS 442.325 is amended to read:

442.325. (1) A certificate of need shall be required for the development or establishment of a health care facility of any new health maintenance organization.

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

(3) Nothing in ORS 244.050, 431.250, 441.015 to 441.087, 442.015 to 442.420 and 442.450 applies to any decision of a health maintenance organization involving its organizational structure, its arrangements for financing health services, the terms of its contracts with enrolled beneficiaries or its scope of benefits.

(4) With the exception of certificate of need requirements, when applicable, the licensing and regulation of health maintenance organizations shall be controlled by ORS 750.005 to 750.095 and statutes incorporated by reference therein.

(5) It is the policy of ORS 244.050, 431.250, 441.015 to 441.087, 442.015 to 442.420 and 442.450 to encourage the growth of health maintenance organizations as an alternative delivery system and to provide the facilities for the provision of quality health care to the present and future members who may enroll within their defined service area.

(6)(a) It is also the policy of ORS 244.050, 431.250, 441.015 to 441.087, 442.015 to 442.420 and 442.450 to consider the special needs and circumstances of health maintenance organizations. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new health service from the existing providers in the area that are not health maintenance organizations.

(b) The [*Department of Human Services*] **Oregon Health Authority** shall issue a certificate of need for beds, services or equipment to meet the needs or reasonably anticipated needs of members of health maintenance organizations when beds, services or equipment are not available from non-plan providers.

SECTION 753. ORS 442.342 is amended to read:

442.342. (1) Notwithstanding any other provision of law, a hospital licensed under ORS 441.025, in accordance with rules adopted by the [*Department of Human Services*] **Oregon Health Authority**, may apply for waiver from the provisions of ORS 442.325 and section 9, chapter 1034, Oregon Laws 1989, and the [*department*] **authority** shall grant such waiver if, for the most recently completed hospital fiscal year preceding the date of application for waiver and each succeeding fiscal year thereafter, the percentage of qualified inpatient revenue is not less than that described in subsection (2) of this section.

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

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

(3) As used in this section:

(a) "Qualified inpatient revenue" means revenue earned from public and private payers for inpatient hospital services approved by the [*department*] **authority** pursuant to rules, including:

(A) Revenue earned pursuant to Title XVIII, United States Social Security Act, when such revenue is based on diagnostic related group prices which include capital-related expenses or other risk-based payment programs as approved by the [*department*] **authority**;

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

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

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

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

(F) Other prospectively determined forms of inpatient hospital reimbursement approved in advance by the [*department*] **authority** in accordance with rules.

(b) "Percentage of qualified inpatient revenue" means qualified inpatient revenue divided by total gross inpatient revenue as defined by administrative rule of the [*department*] **authority**.

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

(b) If the [department] **authority** finds that the failure was without just cause and that the hospital has undertaken projects that, except for the provisions of this section would have been subject to ORS 442.325 or section 9, chapter 1034, Oregon Laws 1989, the [department] **authority** shall impose one of the penalties outlined in paragraph (c) of this subsection.

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

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

(5) Nothing in this section shall be construed to permit a hospital to develop a new inpatient hospital facility or provide new services authorized by facilities defined as “long term care facility” under ORS 442.015 under a waiver granted pursuant to subsection (1) of this section.

SECTION 754. ORS 442.502 is amended to read:

442.502. (1) For purposes of determining the size of a rural hospital, beds certified by the [Department of Human Services] **Oregon Health Authority** on the license of the hospital as special inpatient care beds shall not be included.

(2) As used in this section, “special inpatient care beds” means beds that:

(a) Are used for the treatment of patients with mental illness or for the treatment of alcoholism or drug abuse, or are located in a rehabilitation center, a college infirmary, a chiropractic facility, a freestanding hospice facility, an infirmary for the homeless or an inpatient care facility described in ORS 441.065;

(b) Are physically separate from acute inpatient care beds, at least by being located on separate floors or wings of the same building;

(c) Are never used for acute patient care;

(d) Are staffed by dedicated direct care personnel for whom separate employment records are maintained;

(e) Have separate medical directors; and

(f) Maintain separate admission, discharge and patient records.

SECTION 755. ORS 442.700 is amended to read:

442.700. As used in ORS 442.700 to 442.760:

(1) “Board of governors” means the governors of a cooperative program as described in ORS 442.720.

(2) “Cooperative program” means a program among two or more health care providers for the purpose of providing heart and kidney transplant services including, but not limited to, the sharing, allocation and referral of physicians, patients, personnel, instructional programs, support services, facilities, medical, diagnostic, laboratory or therapeutic services, equipment, devices or supplies, and other services traditionally offered by health care providers.

(3) “Director” means the Director of Human Services.

(4) “Health care provider” means a hospital, physician or entity, a significant part of whose activities consist of providing hospital or physician services in this state. For purposes of the immunities provided by ORS 442.700 to 442.760 and 646.740, “health care provider” includes any officer, director, trustee, employee, or agent of, or any entity under common ownership and control with, a health care provider.

(5) “Hospital” means a hospital, as defined in ORS 442.015 [(19)], or a long term care facility or an ambulatory surgical center, as those terms are defined in ORS 442.015, that is licensed under ORS 441.015 to 441.089. “Hospital” includes community health programs established under ORS 430.610 to 430.695.

(6) “Order” means a decision issued by the director under ORS 442.710 either approving or denying an application for a cooperative program and includes modifications of an original order under ORS 442.730 (3)(b) and ORS 442.740 (1) and (4).

(7) "Party to a cooperative program agreement" or "party" means an entity that enters into the principal agreement to establish a cooperative program and applies for approval under ORS 442.700 to 442.760 and 646.740 and any other entity that, with the approval of the director, becomes a member of a cooperative program.

(8) "Physician" means a physician defined in ORS 677.010 (13) and licensed under ORS chapter 677.

SECTION 756. ORS 442.705 is amended to read:

442.705. (1) The Legislative Assembly finds that direct competition among health care providers in the field of heart and kidney transplant services may not result in the most cost efficient and least expensive transplant services for the citizens of this state and that it is in the public interest to allow cooperative programs among health care providers providing heart and kidney transplant services.

(2) The Legislative Assembly declares that, to the extent provided in ORS 442.700 to 442.760, it is the policy and intent of this state to displace competition among health care providers providing heart and kidney transplant services by allowing health care providers to enter into cooperative programs governing the provision of heart and kidney transplant services in order to achieve in each instance the following goals:

(a) Reduction of, or protection against, rising costs of heart and kidney transplant services;
(b) Reduction of, or protection against, rising prices for heart and kidney transplant services;
(c) Improvement or maintenance of the quality of heart and kidney transplant services provided in this state;

(d) Reduction of, or protection against, duplication of resources including, without limitation, expensive medical specialists, medical equipment and sites of service;

(e) Improvement or maintenance of efficiency in the delivery of heart and kidney transplant services;

(f) Improvement or maintenance of public access to heart and kidney transplant services;

(g) Increase in donations of organs for transplantation; and

(h) Improvement in the continuity of patient care.

(3) The Legislative Assembly further declares that the goals identified in subsection (2) of this section represent the policies of this state.

(4) The Legislative Assembly further declares that once a cooperative program is approved under ORS 442.700 to 442.760, there is an interest in insuring stability in the provision of health care services by a cooperative program, to the extent stability is consistent with achieving the goals identified in subsection (2) of this section.

(5) The Director of [*Human Services*] **the Oregon Health Authority** shall actively supervise the cooperative program in accordance with authority under ORS 442.700 to 442.760 and 646.740.

SECTION 757. ORS 442.710 is amended to read:

442.710. (1) The Oregon Health and Science University and one or more entities, each of which operates at least three hospitals in a single urban area in this state, may apply to the Director of [*Human Services*] **the Oregon Health Authority** for approval of a cooperative program. The application shall include an executed written copy of all agreements for the cooperative program.

(2) An application for approval of a cooperative program shall be made in the form and manner and shall set forth any information regarding the proposed cooperative program that the director may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all health care providers who propose to provide heart and kidney transplant services under the cooperative program, together with appropriate evidence of compliance with any licensing or certification requirements for those health care providers to practice in this state. In the case of employed physicians, the list and the information to be submitted may be limited to the employer or organizational unit of the employer;

(b) A description of the activities to be conducted by the cooperative program;

(c) A description of proposed anticompetitive practices listed in ORS 442.715, any practices that the parties anticipate will have significant anticompetitive effects and a description of practices of

the cooperative program affecting costs, prices, personnel positions, capital expenditures and allocation of resources;

(d) A list of the goals identified in ORS 442.705 (2) that the cooperative program expects to achieve;

(e) A description of the proposed places and manner of providing heart and kidney transplant services and services related to heart and kidney transplants under the cooperative program;

(f) A proposed budget for operating the cooperative program;

(g) Satisfactory evidence of financial ability to deliver heart and kidney transplant services in accordance with the cooperative program;

(h) The agreement that establishes the cooperative program and policies that shall govern it; and

(i) Other information the director believes will assist in determining whether the cooperative program will likely achieve the goals listed in ORS 442.705 (2).

(3) The director shall review the application in accordance with the provisions of this section and shall grant, deny or request modification of the application within 90 days of the date the application is filed. The director shall hold one or more public hearings on the application, which shall conclude no later than 80 days after the date the application is filed. The decision of the director on an application shall be considered an order in a contested case for the purposes of ORS chapter 183.

(4) The director shall approve an application made under subsection (2) of this section after:

(a) The applicants have demonstrated they will achieve at least six of the goals of ORS 442.700 to 442.760 and 646.740, including at least the goals identified in ORS 442.705 (2)(a) to (d); and

(b) The director has reviewed and approved the specifics of the anticompetitive activity expected to be conducted by the cooperative program.

(5) In evaluating the application, the director shall consider whether a cooperative program will contribute to or detract from achieving the goals listed in ORS 442.705 (2). The director may weigh goals relating to circumstances that are likely to occur without the cooperative program, and relating to existing circumstances. The director may also consider whether any alternative arrangements would be less restrictive of competition while achieving the same goals.

(6) An order approving a cooperative program shall identify and define the limits of the permitted activities for purposes of granting antitrust immunity under ORS 442.700 to 442.760.

(7) An order approving a cooperative program shall include:

(a) Approval of specific activities listed in ORS 442.715;

(b) Approval of activities the director anticipates will have substantial anticompetitive effects;

(c) Approval of the proposed budget of the cooperative program;

(d) The goals listed in ORS 442.705 (2) that the cooperative program is expected to achieve; and

(e) Approval of the cooperative program as described in the application and a finding that the cooperative program is in the public interest.

(8) An order denying the application for a cooperative program shall identify the findings of fact and reasons supporting denial.

(9) Either the director or all the parties to the cooperative program may request a modification of an application made under this section. A request for a modification shall result in one extension of 30 days after submission of the modified application. The director shall issue an order under this section within 30 days after submission of the modified application.

SECTION 758. ORS 442.720 is amended to read:

442.720. (1) If the Director of [*Human Services*] **the Oregon Health Authority** issues an order approving an application for a cooperative program under ORS 442.710, the director shall establish a board of governors to govern the cooperative program. The board of governors shall not constitute, for any purpose, a governmental agency.

(2) The board of governors shall consist of the president or other chief executive officer of each health care provider that is a party to the cooperative program agreement and the director or a designee of the director. The designee shall serve at the pleasure of the director. The designee shall

not have any economic or other interest in any of the health care providers associated with the cooperative program.

(3) In governing the cooperative program, the board of governors shall develop policy and approve budgets for the implementation of the cooperative program.

(4) The director or designee of the director may reject any operating or capital budget of the cooperative program upon a finding by the director that the budget is not consistent with the goals listed in ORS 442.705 (2) that the cooperative program is expected to achieve.

SECTION 759. ORS 442.725 is amended to read:

442.725. Not later than 60 days following each anniversary date of the approval of a cooperative program by the Director of [*Human Services*] **the Oregon Health Authority**, the board of governors of the cooperative program shall deliver an annual report to the director. The report shall specifically describe:

(1) How heart and kidney transplant services and related services of the cooperative program are being provided in accordance with the order;

(2) Which of the goals identified in the order are being achieved and to what extent; and

(3) Any substantial changes in the cooperative program.

SECTION 760. ORS 442.730 is amended to read:

442.730. (1) The Director of [*Human Services*] **the Oregon Health Authority** shall review and evaluate the annual report delivered under ORS 442.725. The director shall:

(a) Determine the extent to which the cooperative program is achieving the goals identified in the order;

(b) Review the activities being conducted to achieve the goals; and

(c) Determine whether each of the activities is still necessary and appropriate to achieve the goals.

(2) If the director determines that additional information is needed for the review described in subsection (1) of this section, the director may order the board of governors to provide the information within a specified time.

(3) Within 60 days after receiving the annual report or any additional information ordered under subsection (2) of this section, the director shall:

(a) Approve the report if the director determines that the cooperative program is operating in accordance with the order and that the goals identified in the order are being adequately achieved by the cooperative program;

(b) Modify the order as appropriate to adjust to changes in the cooperative program approved by the director and approve the report as provided in paragraph (a) of this subsection;

(c) Order the board of governors to make remedial changes in anticompetitive activities not in compliance with the order and request the board of governors to report on progress not later than a deadline specified by the director;

(d) Revoke approval of the cooperative program; or

(e) Take any of the actions set forth in ORS 442.740.

SECTION 761. ORS 442.735 is amended to read:

442.735. (1) Any person may file a complaint with the Director of [*Human Services*] **the Oregon Health Authority** requesting that a specific decision or action of a cooperative program supervised by the director be reversed or modified, or that approval for all or part of the activities permitted by the order be suspended or terminated. The complaint shall allege the reasons for the requested action and shall include any evidence relating to the complaint.

(2) The director on the director's own initiative may at any time request information from the board of governors concerning the activities of the cooperative program to determine whether the cooperative program is in compliance with the order.

SECTION 762. ORS 442.740 is amended to read:

442.740. (1) During the review of the annual report described in ORS 442.730, after receiving a complaint under ORS 442.735, or on the director's own initiative, the Director of [*Human Services*] **the Oregon Health Authority** may take one or more of the following actions:

(a) If the director determines that a particular decision or action is not in accordance with the order, or that the parties are engaging in anticompetitive activity not permitted by the order, the director may direct the board of governors to identify and implement corrective action to insure compliance with the order or may modify the order.

(b) If the director determines that the cooperative program is engaging in unlawful activity not permitted by the order or is not complying with the directive given under paragraph (a) of this subsection, the director may serve on the cooperative program a proposed order directing the cooperative program to:

- (A) Conform with the directive under paragraph (a) of this subsection; or
- (B) Cease and desist from engaging in the activity.

(2) The cooperative program shall have up to 30 days to comply with a proposed order under subsection (1)(b) of this section unless the board of governors demonstrates additional time is needed for compliance.

(3) If the director determines that the participants in the cooperative program are in substantial noncompliance with the cease and desist directive, the director may seek an appropriate injunction in the circuit courts of Marion or Multnomah Counties.

(4) If the director determines that a sufficient number of the goals set forth in ORS 442.705 (2) are not being achieved or that the cooperative program is engaging in activity not permitted by the order, the director may suspend or terminate approval for all or part of the activities approved and permitted by the order.

(5) A proposed order to be entered under subsection (1)(b) or (4) of this section may be served upon the cooperative program without prior notice. The cooperative program may contest the proposed order by filing a written request for a contested case hearing with the director not later than 20 days following the date of the proposed order. The proposed order shall become final if no request for a hearing is received. Unless inconsistent with this subsection, the provisions of ORS chapter 183, as applicable, shall govern the hearing procedure and any judicial review.

(6) The only effect of an order suspending or terminating approval under ORS 442.700 to 442.760 shall be to withdraw the immunities granted under ORS 442.715 (3) for anticompetitive activity permitted by the order and taken after the effective date of the order.

SECTION 763. ORS 442.745 is amended to read:

442.745. If parties to a cooperative program agreement provide the Director of [*Human Services*] **the Oregon Health Authority** with written or oral information that is confidential or otherwise protected from disclosure under Oregon law, the disclosures shall not be considered a waiver of any right to protect the information from disclosure in other proceedings.

SECTION 764. ORS 442.750 is amended to read:

442.750. (1) Notwithstanding the provisions of ORS 646.705 to 646.836:

(a) A cooperative program for which approval has been granted under ORS 442.700 to 442.760 and 646.740 is a lawful program to the extent it engages in activities permitted by the order and supervised by the Director of [*Human Services*] **the Oregon Health Authority** and is in compliance with the order; and

(b) If the parties to a cooperative program apply to the director as provided in ORS 442.710, the conduct of the parties and all other participants in negotiating or entering into a cooperative program is lawful conduct.

(2) Subsection (1)(b) of this section does not apply to persons negotiating a cooperative program if it can be demonstrated, by a preponderance of the evidence, that the persons do not or did not intend to enter into a cooperative agreement.

(3) Nothing in ORS 442.700 to 442.760 and 646.740 shall be construed to immunize any person from liability or impose liability where none would otherwise exist under federal or state antitrust laws for conduct in negotiating and entering into a cooperative program for which no application was filed with the director.

SECTION 765. ORS 442.755 is amended to read:

442.755. (1) The Director of [*Human Services*] **the Oregon Health Authority** shall adopt rules as may be necessary to carry out the provisions of ORS 442.700 to 442.760.

(2) The costs of program approval and supervision shall be paid by the parties to a cooperative program agreement and the director shall set fees for application, annual review and supervision as necessary to fund the director's supervision of the program.

SECTION 766. ORS 442.760 is amended to read:

442.760. Notwithstanding the provisions of ORS 183.310 (7) and 183.480, only a party to a cooperative program agreement or the Director of [*Human Services*] **the Oregon Health Authority** shall be entitled to a contested case hearing or judicial review of an order issued pursuant to ORS 442.700 to 442.760 and 646.740.

SECTION 767. ORS 442.800 is amended to read:

442.800. (1) The Advisory Committee on Physician Credentialing Information is established within the Office for Oregon Health Policy and Research. The committee consists of nine members appointed by the Administrator of the Office for Oregon Health Policy and Research as follows:

(a) Three members who are physicians licensed by the Oregon Medical Board or representatives of physician organizations doing business within the State of Oregon;

(b) Three representatives of hospitals licensed by the [*Department of Human Services*] **Oregon Health Authority**; and

(c) Three representatives of health care service contractors that have been issued a certificate of authority to transact health insurance in this state by the Department of Consumer and Business Services.

(2) All members appointed pursuant to subsection (1) of this section shall be knowledgeable about national standards relating to physician credentialing.

(3) The term of appointment for each member of the committee is three years. If, during a member's term of appointment, the member no longer qualifies to serve as designated by the criteria of subsection (1) of this section, the member must resign. If there is a vacancy for any cause, the administrator shall make an appointment to become immediately effective for the unexpired term.

(4) Members of the committee are not entitled to compensation or reimbursement of expenses.

SECTION 768. ORS 442.807 is amended to read:

442.807. (1) Within 30 days of receiving the recommendations of the Advisory Committee on Physician Credentialing Information, the Administrator of the Office for Oregon Health Policy and Research shall forward the recommendations to the Director of the [*Department of Consumer and Business Services and to the Director of Human Services*] **Oregon Health Authority**. The administrator shall request that the [*Department of Consumer and Business Services and the Department of Human Services*] **Oregon Health Authority** adopt rules to carry out the efficient implementation and enforcement of the recommendations of the committee.

(2) The [*Department of Consumer and Business Services and the Department of Human Services*] **Oregon Health Authority** shall:

(a) Adopt administrative rules in a timely manner, as required by the Administrative Procedures Act, for the purpose of effectuating the provisions of ORS 442.800 to 442.807; and

(b) Consult with each other and with the administrator to ensure that the rules adopted by the [*Department of Consumer and Business Services and the Department of Human Services*] **Oregon Health Authority** are identical and are consistent with the recommendations developed pursuant to ORS 442.805 for affected hospitals and health care service contractors.

(3) The uniform credentialing information required pursuant to the administrative rules of the [*Department of Consumer and Business Services and the Department of Human Services*] **Oregon Health Authority** represent the minimum uniform credentialing information required by the affected hospitals and health care service contractors. Nothing in ORS 442.800 to 442.807 shall be interpreted to prevent an affected hospital or health care service contractor from requesting additional credentialing information from a licensed physician for the purpose of completing physician credentialing procedures used by the affected hospital or health care service contractor.

SECTION 769. ORS 443.005 is amended to read:

443.005. As used in ORS 443.005 to 443.095:

(1) 'Authority' means the Oregon Health Authority.

[*(1) "Department" means the Department of Human Services.*]

(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.

(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.

SECTION 770. ORS 443.015 is amended to read:

443.015. 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 [*Department of Human Services*] **Oregon Health Authority**. The license shall be renewable annually and is not transferable.

SECTION 771. ORS 443.035 is amended to read:

443.035. (1) The [*Department of Human Services*] **Oregon Health Authority** may grant a license to a home health agency for a calendar year, may annually renew a license and may allow for a change of ownership, upon payment of a fee as follows:

(a) For a new home health agency:

(A) \$1,000; and

(B) An additional \$1,000 for each subunit of a parent home health agency.

(b) For renewal of a license:

(A) \$600; and

(B) An additional \$600 for each subunit of a parent home health agency.

(c) For a change of ownership at a time other than the annual renewal date:

(A) \$500; and

(B) An additional \$500 for each subunit of a parent home health agency.

(2) Notwithstanding subsection (1)(c) of this section, the fee for a change in ownership shall be \$100 if a change in ownership does not involve:

(a) The majority owner or partner; or

(b) The administrator operating the agency.

(3) All fees received pursuant to subsection (1) of this section shall be paid over to the State Treasurer and credited to the Public Health Account. Such moneys are appropriated continuously to the [*Department of Human Services*] **Oregon Health Authority** for the administration of ORS 443.005 to 443.095.

SECTION 772. ORS 443.045 is amended to read:

443.045. (1) The [*Department of Human Services*] **Oregon Health Authority** 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 [*department*] **authority** 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 chapter 183.

SECTION 773. ORS 443.055 is amended to read:

443.055. 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 [*Department of Human Services*] **Oregon**

Health Authority may approve the designation of an appropriate part of the organization as the governing body.

SECTION 774. ORS 443.085 is amended to read:

443.085. The [*Department of Human Services*] **Oregon Health Authority** shall adopt rules relating to the home health agencies licensed under ORS 443.005 to 443.095, 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.

SECTION 775. ORS 443.205 is amended to read:

443.205. As used in ORS 443.215 and 443.225, “domiciliary care facilities” means facilities providing residential care to adults, including adult foster homes, group care facilities or residential treatment, training or care facilities, established, contracted for or operated by the Department of Human Services **or the Oregon Health Authority**.

SECTION 776. ORS 443.225 is amended to read:

443.225. (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 the population of the county in which the additional capacity is proposed to be located to the number of persons originating from the county **who are** determined to be in need of domiciliary care [*by the Department of Human Services*]. 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) The Department of Human Services shall determine the number of persons originating from a county who are in need of domiciliary care if the domiciliary care facility is an adult foster home as defined in ORS 443.705, a residential care facility or residential training facility as those terms are defined in ORS 443.400 or other group care facility.

(3) The Oregon Health Authority shall determine the number of persons originating from a county who are in need of domiciliary care if the domiciliary care facility is a residential treatment facility as defined in ORS 443.400.

[2] (4) When 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] (5) The computation required by subsection (1) of this section does not require reduction in any domiciliary care facility capacity existing on October 4, 1977.

[4] (6) 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.

SECTION 776a. ORS 443.315 is amended to read:

443.315. (1) A person may not operate or maintain an in-home care agency or purport to operate or maintain an in-home care agency without obtaining a license from the [*Department of Human Services*] **Oregon Health Authority**.

(2) The [*department*] **authority** shall establish requirements and qualifications for licensure under this section by rule. The [*department*] **authority** shall issue a license to an applicant that has the necessary qualifications and meets all requirements established by rule, including the payment

of required fees. An in-home care agency shall be required to maintain administrative and professional oversight to ensure the quality of services provided.

(3) Application for a license required under subsection (1) of this section shall be made in the form and manner required by the [department] **authority** by rule and shall be accompanied by any required fees.

(4) A license may be granted, or may be renewed annually, upon payment of a fee as follows:

(a) For the initial licensure of an in-home care agency:

(A) \$1,500; and

(B) An additional \$750 for each subunit.

(b) For renewal of a license:

(A) \$750; and

(B) An additional \$750 for each subunit.

(c) For a change of ownership at a time other than the annual renewal date:

(A) \$350; and

(B) An additional \$350 for each subunit.

(5) A license issued under this section is valid for one year. A license may be renewed by payment of the required renewal fee and by demonstration of compliance with requirements for renewal established by rule.

(6) A license issued under this section is not transferable.

(7) The [department] **authority** shall conduct an on-site inspection of each in-home care agency prior to services being rendered and once every three years thereafter as a requirement for licensing.

SECTION 776b. ORS 443.325 is amended to read:

443.325. The [Department of Human Services] **Oregon Health Authority** may impose a civil penalty in the manner provided in ORS 183.745 and deny, suspend or revoke the license of any in-home care agency licensed under ORS 443.315 for failure to comply with ORS 443.305 to 443.350 or with rules adopted thereunder. A failure to comply with ORS 443.305 to 443.350 includes, but is not limited to:

(1) Failure to provide a written disclosure statement to the client or the client's representative prior to in-home care services being rendered;

(2) Failure to provide the contracted in-home care services; or

(3) Failure to correct deficiencies identified during [a department] **an inspection by the authority.**

SECTION 776c. ORS 443.327 is amended to read:

443.327. (1) Notwithstanding the existence and pursuit of any other remedy, the [Department of Human Services] **Oregon Health Authority** may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of an in-home care agency without a license. The [department] **authority** may recover attorney fees and court costs for any such action.

(2) If an in-home care agency is found to be operating without a valid license, the in-home care agency must provide notice to its clients in a manner and period of time set forth by the [department] **authority.**

SECTION 776d. ORS 443.340 is amended to read:

443.340. The [Department of Human Services] **Oregon Health Authority** shall adopt administrative rules necessary for the implementation and administration of ORS 443.305 to 443.350. These rules shall include, but are not limited to, a requirement that an in-home care agency must conduct criminal background checks on all individuals employed by or contracting with the agency as in-home caregivers.

SECTION 776e. ORS 443.345 is amended to read:

443.345. All moneys received pursuant to ORS 443.315, 443.325 and 443.327 shall be deposited in the State Treasury and credited to an account designated by the [Department of Human Services]

Oregon Health Authority. Such moneys are continuously appropriated to the [*department*] **authority** for the administration of ORS 443.305 to 443.350.

SECTION 777. ORS 443.400 is amended to read:

443.400. As used in ORS 443.400 to 443.455 and 443.991 [(2)], unless the context requires otherwise:

(1) [*Department*] means the Department of Human Services] **“Director” means the director of the licensing agency for the residential facility.**

(2) [*Director*] means the Director of Human Services] **“Licensing agency” means:**

(a) **The Department of Human Services, if the residential facility that is licensed, or that the Director of Human Services determines should be licensed, is a residential care facility, residential training facility or residential training home; or**

(b) **The Oregon Health Authority, if the residential facility that is licensed, or that the Director of the Oregon Health Authority determines should be licensed, is a residential treatment facility or residential treatment home.**

(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 the individual 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 socially dependent individuals or individuals with physical disabilities, 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 individuals with mental retardation or other developmental disabilities, 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 individuals with mental retardation or other developmental disabilities, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the [*department*] **Department of Human Services.**

(9) “Residential treatment facility” means a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, 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 individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, 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.

SECTION 778. ORS 443.405 is amended to read:

443.405. For purposes of ORS 443.400 to 443.455 and 443.991 [(2)], “residential facility” does not include:

(1) A residential school;

- (2) A state or local correctional facility, other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;
- (3) A youth correction facility as defined in ORS 420.005;
- (4) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;
- (5) A juvenile detention facility as defined in ORS 419A.004;
- (6) A nursing home;
- (7) A hospital;
- (8) A place primarily engaged in recreational activities;
- (9) A foster home; or
- (10) A place providing care and treatment on less than a 24-hour basis.

SECTION 779. ORS 443.410 is amended to read:

443.410. (1) A license issued by the Department of Human Services is required in order to operate or maintain *[any residential facility for persons who have developmental, physical or psychiatric disabilities or are socially dependent or alcohol or drug dependent]* **a residential care facility, residential training facility or residential training home.** In the case of a combination of residents, the category of licensure shall be determined by the Director of Human Services.

(2) A license issued by the Oregon Health Authority is required in order to operate or maintain a residential treatment facility or residential treatment home.

SECTION 780. ORS 443.415 is amended to read:

443.415. (1) Applications for licensure to maintain and operate a residential facility shall be made to the Department of Human Services **or the Oregon Health Authority** on forms provided for that purpose by the *[department]* **appropriate licensing agency.** 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]* **licensing agency** shall conduct an investigation. The *[department]* **licensing agency** shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.400 to 443.455 and the rules of the *[director]* **licensing agency.** Licensure may be denied when a residential facility is not in compliance with ORS 443.400 to 443.455 or the rules of the *[Director of Human Services]* **licensing agency.** 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.

SECTION 781. ORS 443.420, as amended by section 12, chapter 18, Oregon Laws 2008, is amended to read:

443.420. (1) A person applying for a license under ORS 443.415 must, in the judgment of the *[Director of Human Services]* **director of the licensing agency,** 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 336.575 to the *[Department of Human Services]* **licensing agency.**

(6) Prior to an initial licensure of a residential care facility, the [department] **licensing agency** shall consider:

- (a) The license applicant's history of regulatory compliance and operational experience;
- (b) The need in the local community for the services offered by the license applicant, as demonstrated by a market study produced by the license applicant;
- (c) The willingness of the license applicant to serve underserved populations; and
- (d) The willingness of the license applicant to contract with the [department] **licensing agency** to provide services through the state medical assistance program.

SECTION 782. ORS 443.422 is amended to read:

443.422. (1) To prevent the perpetuation of segregated housing patterns, the Department of Human Services, **in consultation with the Oregon Health Authority**, 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.

SECTION 783. ORS 443.425 is amended to read:

443.425. (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 of Human Services **or the Oregon Health Authority** considers necessary.

(2) A license is renewable upon submission of an application to the department **or the authority** 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] **licensing agency** has acted upon such application. The [department] **licensing agency** 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.

SECTION 784. ORS 443.430 is amended to read:

443.430. (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 Services in the administration of ORS 443.400 to 443.455.]

(2)(a) All moneys collected under ORS 443.400 to 443.455 for the purpose of licensing a residential care facility, residential training facility or residential training home shall be deposited in a special account in the General Fund and are continuously appropriated for payment of expenses incurred by the Department of Human Services in administering ORS 443.400 to 443.455.

(b) All moneys collected under ORS 443.400 to 443.455 for the purpose of licensing a residential treatment facility or residential treatment home shall be deposited in a special account in the General Fund and are continuously appropriated for payment of expenses incurred by the Oregon Health Authority in administering ORS 443.400 to 443.455.

SECTION 785. ORS 443.435 is amended to read:

443.435. (1) The Director of Human Services or authorized representative shall periodically visit and inspect every [*residential facility*] **residential care facility, residential training facility or residential training home** to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 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 of Human Services 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*] **the facility or home that are** pertinent to fire safety.

(2) **The Director of the Oregon Health Authority or authorized representative shall periodically visit and inspect every residential treatment facility or residential treatment home to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 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 Oregon Health Authority and the State Fire Marshal or authorized representative on request shall be permitted access to the premises and records of individuals in the facility or home that are pertinent to fire safety.**

SECTION 786. ORS 443.440 is amended to read:

443.440. The Department of Human Services **or the Oregon Health Authority** may revoke or suspend the license of any residential facility that is not operated in accordance with ORS 443.400 to 443.455 or the rules adopted thereunder. Such revocation or suspension shall be taken in accordance with rules of the [*department*] **licensing agency** and ORS chapter 183. 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.

SECTION 787. ORS 443.445 is amended to read:

443.445. (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*] **care facility, residential training facility or residential training 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 Department of Human Services and in accordance with the rules of the department and consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

(4) A resident of a residential treatment facility or residential treatment home who requires nursing care in addition to treatment needs may be served by that facility or home with approval from the Oregon Health Authority and in accordance with the rules of the authority and consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

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

[(5)] (6) 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 procedures shall be required.

SECTION 788. ORS 443.450 is amended to read:

443.450. (1) [*The Director of Human Services shall adopt rules governing*] **For a residential care facility, residential training facility or residential training home, the Director of Human Services shall adopt rules governing:**

- (a) The physical properties of the [*residential facility*] **facility or home;**
- (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) For a residential treatment facility or residential treatment home, the Director of the Oregon Health Authority shall adopt rules governing:

- (a) The physical properties of the facility or home;**
- (b) Storage, preparation and serving of food;**
- (c) Treatment to be provided;**
- (d) The number, experience and training of the staff; and**
- (e) Any other factors affecting the treatment provided.**

[2] (3) 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] (4) For purposes of this section, “categories” refers to different populations of residents, differentiated by, but not limited to, age and need, as defined **by the Department of Human Services or the authority** by rule.

SECTION 789. ORS 443.455 is amended to read:

443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 are [*considered to be long-term care facilities, subject to ORS 441.705 to 441.745. However, the Director of Human Services 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.*] **subject to ORS 441.705 to 441.745.**

(2) The Director of Human Services shall by rule prescribe a schedule of penalties for residential care facilities, residential training facilities and residential training homes that are not in compliance with ORS 443.400 to 443.455.

(3) The Director of the Oregon Health Authority shall by rule prescribe a schedule of penalties for residential treatment facilities and residential treatment homes that are not in compliance with ORS 443.400 to 443.455.

SECTION 790. ORS 443.460 is amended to read:

443.460. (1) The [*director*] **Director of Human Services** 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.

SECTION 791. ORS 443.705 is amended to read:

443.705. 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 in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

[2] “*Department*” means the *Department of Human Services*.]

[3] “*Director*” means the *Director of Human Services*.]

[4] (2) “Licensed adult foster home” means a home which has been investigated and approved by the [*department*] **licensing agency**. This includes an on-site inspection of the facility.

(3) “Licensing agency” means:

(a) The Department of Human Services for adult foster homes licensed by the department.

(b) The Oregon Health Authority for adult foster homes licensed by the authority.

[5] (4) “Provider” means any person operating an adult foster home and includes a resident manager. “Provider” does not include the owner or lessor of the building in which the adult foster

home is located or the owner or lessor of the land on which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

[(6)] (5) “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)] (6) “Substitute caregiver” means any person who provides care and services in an adult foster home under the jurisdiction of the [department] **licensing agency** in the absence of the provider or resident manager.

SECTION 791a. ORS 443.715 is amended to read:

443.715. 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 persons with physical disabilities where the [Department of Human Services] **licensing agency** 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 [department] **licensing agency**.

[(4) Any residential treatment home, as defined in ORS 443.400, licensed and funded by the department.]

SECTION 791b. ORS 443.720 is amended to read:

443.720. (1) The Legislative Assembly finds that:

(a) Adult foster homes provide needed care and services to thousands of Oregonians who are elderly or have disabilities and who might otherwise be institutionalized;

(b) The protection of the health, safety and well-being of the residents of adult foster homes is an important function of the [Department of Human Services] **licensing agency**; and

(c) Consistent interpretation, application and enforcement of regulatory standards is necessary and desirable for the protection of adult foster home residents.

(2) It is legislative intent that:

(a) The [department] **licensing agency** provide training and guidelines for employees assigned to licensing and enforcement to encourage consistency; and

(b) The [department] **licensing agency** take vigorous action to ensure that inspections and investigations are carried out as required by law.

SECTION 791c. ORS 443.725 is amended to read:

443.725. (1) Every provider of adult foster care must be licensed with the [Department of Human Services] **licensing agency** before opening or operating an adult foster home caring for adult residents.

(2) Except as provided in subsection (4) of this section, a provider must live in the home that is to be licensed or hire a resident manager to live in the home.

(3) Except as provided in subsection (4) of this section, there must be a provider or substitute caregiver on duty 24 hours per day in an adult foster home under the jurisdiction of the [department] **licensing agency**.

(4) The [department] **licensing agency** shall adopt rules establishing standards for granting exceptions to the requirements of subsections (2) and (3) of this section. The standards must be designed to safeguard residents’ health and safety and residents’ uninterrupted receipt of services.

SECTION 791d. ORS 443.730 is amended to read:

443.730. (1) The provider shall furnish the names, addresses and telephone numbers of the substitute caregivers employed or used by the provider to the [Department of Human Services] **licensing agency** upon the request of the [department] **agency**.

(2) The [department] **licensing agency** shall require the provider to furnish information describing the planned operation of the adult foster home, including the use of substitute caregivers and other staff, as part of the license application.

(3) The provider shall not allow a substitute caregiver or other caregiver to provide care to a resident unless the following standards are met and documented:

(a) The [department] **licensing agency** has completed a criminal records check for the State of Oregon and has completed or initiated a national criminal records check, if appropriate under ORS 443.735 (3), for the person. The [department] **licensing agency** shall adopt rules to provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

(b) The substitute caregiver has successfully completed the training required by the [department] **licensing agency**.

(c) The caregiver is able to understand and communicate in oral and written English.

(d) The provider has oriented the caregiver to the residents in the adult foster home, their care needs and the physical characteristics of the home.

(e) The provider has trained the caregiver to meet the routine and emergency needs of the residents.

(4) The [department] **licensing agency** shall establish educational requirements for substitute caregivers and other caregivers designed to impart the practical knowledge and skills necessary to maintain the health, safety and welfare of residents. The training shall include a test established by the [department] **licensing agency** to be completed by the caregiver. The test shall be completed by the caregiver without the help of any other person.

SECTION 791e. ORS 443.733 is amended to read:

443.733. (1) As used in this section, “adult foster care home provider” means a person who operates an adult foster home in the provider’s home and who receives fees or payments from the state for providing adult foster care home services. “Adult foster care home provider” does not include a person:

(a) Who is a resident manager of an adult foster home who does not provide adult foster care home services in the resident manager’s own home or who does not have a controlling interest in, or is not an officer or partner in, the entity that is the provider of adult foster care home services;

(b) Who is not a natural person; or

(c) Whose participation in collective bargaining is determined by the [Department of Human Services] **licensing agency** to be inconsistent with this section or in violation of state or federal law.

(2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is the public employer of record of adult foster care home providers.

(3) Notwithstanding ORS 243.650 (19), adult foster care home providers are considered to be public employees governed by ORS 243.650 to 243.782. Adult foster care home providers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purposes of representation and collective bargaining on matters concerning labor relations. These rights shall be exercised in accordance with the rights granted to public employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Adult foster care home providers may not strike.

(4) Notwithstanding subsections (2) and (3) of this section, adult foster care home providers are not for any other purpose employees of the State of Oregon or any other public body.

(5) The Oregon Department of Administrative Services shall represent the State of Oregon in collective bargaining negotiations with the certified or recognized exclusive representative of an appropriate bargaining unit of adult foster care home providers. The Oregon Department of Administrative Services is authorized to agree to terms and conditions of collective bargaining agreements on behalf of the State of Oregon.

(6) Notwithstanding ORS 243.650 (1), an appropriate bargaining unit for adult foster care home providers is any bargaining unit recognized by the Governor in an executive order issued prior to January 1, 2008.

(7) This section does not modify any right of an adult receiving foster care.

SECTION 791f. ORS 443.735 is amended to read:

443.735. (1) Applications for a license to maintain and operate an adult foster home shall be made on forms provided by the [Department of Human Services] **licensing agency**. Each application shall be accompanied by a fee of \$20 per bed requested for licensing.

(2) Upon receipt of an application and fee, the [department] **licensing agency** shall conduct an investigation.

(3) The [department] **licensing agency** shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the [department] **licensing agency**;

(b) The [department] **licensing agency** has completed an inspection of the adult foster home;

(c) The [department] **licensing agency** has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check shall be conducted in accordance with rules adopted under ORS 181.534;

(d) The [department] **licensing agency** has checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678; and

(e) The applicant has demonstrated to the [department] **licensing agency** the financial ability and resources necessary to operate the adult foster home. The [department] **licensing agency** shall adopt rules as the [department] **agency** deems appropriate that establish the financial standards an applicant must meet to qualify for issuance of a license and that protect financial information from public disclosure. The demonstration of financial ability under this paragraph shall include, but need not be limited to, providing the [department] **licensing agency** with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the [department] **agency** regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the [department] **licensing agency** may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(4) The [department] **licensing agency** may not renew a license under this section unless:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the [department] **licensing agency**;

(b) The [department] **licensing agency** has completed an inspection of the adult foster home;

(c) The [department] **licensing agency** has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check under this paragraph shall be conducted in accordance with rules adopted under ORS 181.534; and

(d) The [department] **licensing agency** has checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678.

(5)(a) In seeking an initial license and renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the [department] **licensing agency**.

(b) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the [department] **licensing agency** to establish noncompliance with ORS 443.705 to 443.825 and the rules of the [department] **agency**.

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

(b) The [department] **licensing agency** shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from the convictions and types of abuse that do not permanently prohibit the person from operating, working in or living in an adult foster home.

(c) A provider may not hire, retain in employment or allow to live in an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse.

(7) 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 names of all providers who own the adult foster home, the address of the premises to which the license applies, the maximum number of residents and the classification of the home. 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.

(8) 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.

(9) The [department] **licensing agency** shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing licensed home or homes and has demonstrated the ability to provide care to the residents of those homes that is adequate and substantially free from abuse and neglect.

(10) 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 Services] **licensing agency**.

(11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the [department] **licensing agency** may issue a 60-day provisional license to a qualified person if the [department] **agency** determines that an emergency situation exists after being notified that the licensed provider of an adult foster home is no longer overseeing operation of the adult foster home.

SECTION 791g. ORS 443.738 is amended to read:

443.738. (1) Except as provided in subsection (3) of this section, all providers, resident managers and substitute caregivers for adult foster homes shall satisfactorily meet all educational requirements established by the [Department of Human Services] **licensing agency**. After consultation with representatives of providers, educators, residents' advocates and the Long Term Care Ombudsman, the [department] **licensing agency** shall adopt by rule standards governing the educational requirements. The rules shall require that a person may not 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 to the requirements.

(2) The rules required under subsection (1) of this section shall include but need not be limited to the following:

(a) A requirement that, before being licensed, a provider successfully completes training that satisfies a defined curriculum, including demonstrations and practice in physical caregiving, screening for care and service needs, appropriate behavior towards residents with physical, cognitive and mental disabilities and issues related to architectural accessibility;

(b) A requirement that a provider pass a test before being licensed or becoming a resident manager. The test shall evaluate the ability to understand and respond appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, residents' preferences and conflicts; and

(c) A requirement that, after being licensed, a provider or resident manager successfully completes continuing education as described in ORS 443.742.

(3) After consultation with representatives of providers, educators, residents' advocates and the Long Term Care Ombudsman, the [department] **licensing agency** may adopt by rule exceptions to the training requirements of subsections (1) and (2) 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. The [department] **licensing agency** may not make any exceptions to the testing requirements.

(4) The [department] **licensing agency** may permit a person who has not completed the training or passed the test required in subsection (2)(a) and (b) of this section to act as a resident manager until the training and testing are completed or for 60 days, whichever is shorter, if the [department] **licensing agency** determines that an unexpected and urgent staffing need exists. The licensed provider must notify the [department] **licensing agency** of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the person has met the requirements for a substitute caregiver for the adult foster home and that the provider will provide adequate supervision.

(5) 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.

(6) Providers shall make available at least six hours of activities each week which are of interest to the residents, not including television or movies. The [department] **licensing agency** shall make information about resources for activities available to providers upon request. Providers or substitute caregivers shall be directly involved with residents on a daily basis.

(7) 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. Providers shall inform real estate licensees, prospective buyers, lessees and transferees in all written communications that the license to operate an adult foster home is not transferable and shall refer them to the [department] **licensing agency** for information about licensing.

(8) If a resident dies or leaves an adult foster home for medical reasons and indicates in writing the intent to not return, the provider may 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 may 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.

(9) 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 maximize a resident's physical functioning. Restraints may not be used for discipline of a resident or for the convenience of the adult foster home. Restraints may be used only as follows:

(a) Psychoactive medications may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.

(b) Physical restraints may be used only pursuant to a qualified practitioner's order that specifies the type, circumstances and duration of use in accordance with rules adopted by the [department] **licensing agency**. The rules adopted by the [department] **licensing agency** relating to physical restraints shall include standards for use and training.

(10) If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the provider shall demonstrate how regular positive contact will occur. Providers may 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.

(11)(a) The provider may 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 resident written notice as soon as possible under the circumstances.

(b) 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.

(c) The resident has 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.

(12) The provider may not include any illegal or unenforceable provision in a contract with a resident and may not ask or require a resident to waive any of the resident's rights.

(13) Any lessor of a building in which an adult foster home is located may not interfere with the admission, discharge or transfer of any resident in the adult foster home unless the lessor is a provider or coprovider on the license.

SECTION 791h. ORS 443.740 is amended to read:

443.740. (1) The [Department of Human Services] **licensing agency** shall maintain current information on all licensed adult foster homes and shall make that information available to prospective residents and other interested members of the public at local [department] offices or area agencies on aging licensing offices throughout the state.

(2) The information shall include:

(a) The location of the adult foster home;

(b) A brief description of the physical characteristics of the home;

(c) The name and mailing address of the provider;

(d) The license classification of the home and the date the provider was first licensed to operate that home;

(e) The date of the last inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;

(f) Copies of all complaint investigations involving the home, together with the findings of the [department] **licensing agency**, the actions taken by the [department] **agency** and the outcome of the complaint investigation;

(g) An explanation of the terms used in the investigation report;

(h) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the [department] **licensing agency** involving the home; and

(i) Whether care is provided primarily by the licensed provider, a resident manager or other arrangement.

(3) Any list of adult foster homes maintained or distributed by the [department] **licensing agency** or a local licensing office shall include notification to the reader of the availability of public records concerning the homes.

SECTION 791i. ORS 443.742 is amended to read:

443.742. (1) The [Department of Human Services] **licensing agency** shall require all providers and resident managers to complete annually 12 hours of continuing education approved by the [department] **agency**, related to:

(a) Care of the elderly and persons with disabilities; and

(b) Business operations of adult foster homes.

(2) Providers and resident managers may not fulfill the continuing education requirements described in subsection (1) of this section with more than four hours of continuing education related to the business operations of adult foster homes.

(3) The [department] **licensing agency** may, by rule, establish continuing education requirements for caregivers who are not providers.

SECTION 791j. ORS 443.745 is amended to read:

443.745. (1) A license may be denied, suspended, revoked or have conditions attached upon a finding by the [Department of Human Services] **licensing agency** 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 or the rules adopted thereunder.

(d) Such other circumstances as may be established by the [department] **licensing agency** by rule.

(2) Conditions attached to a license shall be effective upon order of the director of [Human Services] **the licensing agency**.

(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 chapter 183 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 chapter 183.

(5) In the event the license to maintain an adult foster home is ordered suspended or revoked, the [department] **licensing agency** may withhold service payments until the defective situation is corrected. For protection of residents, the [department] **licensing agency** may arrange for them to move.

(6) A provider whose license has been revoked or whose application has been denied shall not be permitted to make a new application for one year from the date the revocation or denial is final, or for a longer period specified in the order revoking or denying the license.

(7) The [department] **licensing agency** shall deny the application or revoke the license of any person who falsely represents that the person has not been convicted of a crime.

SECTION 791k. ORS 443.755 is amended to read:

443.755. (1) The [Department of Human Services] **licensing agency** staff shall be permitted access to enter and inspect all licensed adult foster homes. The [department] **licensing agency** 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] **agency** 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] **licensing agency** 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] **licensing agency**.

(3)(a) The [Department of Human Services] **licensing agency** 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 [department] **agency**.

(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.

SECTION 791L. ORS 443.760 is amended to read:

443.760. (1) Adult foster homes that are certified as residential homes as defined in ORS 197.660 shall meet all state and local building, sanitation, utility and fire code requirements applicable to single family dwellings. However, by rule, the [Department of Human Services] **licensing agency** may adopt more stringent standards upon a finding that there is a significant health or safety threat to residents that necessitates a standard not imposed on other single family dwellings.

(2) In adopting more stringent standards, the [department] **licensing agency** shall consult with the Department of Consumer and Business Services and the office of the State Fire Marshal to insure adequate evacuation of residents.

(3) As used in this section, "adequate evacuation" means the ability of a provider to evacuate all residents from the dwelling within three minutes.

(4) If a licensed provider rents or leases the premises where the adult foster home is located, the lessor shall charge a flat rate for the lease or rental.

SECTION 791m. ORS 443.765 is amended to read:

443.765. (1) Complaints against adult foster homes may be filed with the [Department of Human Services] **licensing agency** by any person, whether or not a resident of the home. The [department] **licensing agency** shall investigate complaints regarding adult foster homes and shall adopt by rule standards governing investigations pursuant to this section.

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

(3) The [department] **licensing agency** shall maintain a file of all complaints and the action taken on the complaint, indexed by the name of the owner or operator. When the [department] **licensing agency** concludes the investigation of a complaint, the [department] **agency** shall clearly designate the outcome of the complaint investigation in the complaint file. 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] **licensing agency**.

(5)(a) The owner or operator of an adult foster home may not prohibit, discourage or use intimidation against any person to prevent the filing of a complaint with the [department] **licensing agency**.

(b) If a resident, or a person acting on the resident's behalf, files a complaint with the [department] **licensing agency**, the owner or operator of an adult foster home may not retaliate against the resident by:

(A) Increasing charges;

(B) Decreasing services, rights or privileges;

(C) Threatening to increase charges or decrease services, rights or privileges;

(D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(E) Abusing or threatening to harass or abuse a resident in any manner.

(c) The owner or operator of an adult foster home may not retaliate against any person who files a complaint or any witness or employee of a facility interviewed about the complaint, including but not limited to retaliation by restriction of otherwise lawful access to the adult foster 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 filing of a complaint pursuant to this section is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the filing or substance of the complaint. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from the complaint. A person does not act in good faith for the purposes of this subsection if the substance of the complaint is false and:

(a) The person knows that the substance of the complaint is false; or

(b) The person makes the complaint with the intent to harm the owner or operator of the adult foster home, or the adult foster home, and the person shows a reckless disregard for the truth or falsity of the substance of the complaint.

SECTION 791n. ORS 443.767 is amended to read:

443.767. (1) When the [Department of Human Services] **licensing agency** receives a complaint that alleges that a resident of a licensed adult foster home has been injured, abused or neglected, and that the 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 [department] **licensing agency** shall take appropriate corrective action immediately.

(2) When the [department] **licensing agency** receives a complaint that alleges the existence of any circumstance that could result in injury, abuse or neglect of a resident of a licensed adult foster home, and that the circumstance could place the resident's health or safety in imminent danger, the [department] **agency** shall investigate the complaint promptly. If the investigator determines that the complaint is substantiated, the [department] **agency** shall take appropriate corrective action promptly.

(3) After public hearing, the [department] **licensing agency** 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] **licensing agency** may take a reasonable amount of additional time in which to complete the investigation.

(4) The [department] **licensing agency** 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 [department] **licensing agency** shall mail a copy of the investigation report 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 [department] office **of the licensing agency** or the type B area agency on aging, if appropriate. When the [department] **licensing agency** or type B area agency on aging concludes the investigation of a complaint, the [department] **licensing agency** or type B area agency on aging shall clearly designate the outcome of the complaint investigation and make the designation available to the public together with the complaint and the investigation report.

(7) A copy of the report shall be forwarded to the [department] **licensing agency** whether or not the investigation report concludes that the complaint is substantiated.

SECTION 791o. ORS 443.775 is amended to read:

443.775. (1) The [Department of Human Services] **licensing agency** 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] **agency** 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] **licensing agency** 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] **licensing agency**, 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 provider may not employ a resident manager who does not meet the classification standard for the adult foster home.

(3) The provider shall be able to meet the night care needs of a resident before admitting the resident. The provider shall include night care needs in the resident's care plan.

(4) The provider shall screen a prospective resident before admitting the resident. The screening shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall be given to the prospective resident or the prospective resident's representative.

(5) The [department] **licensing agency** shall make rules to assure that any employee who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation.

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

(7) By order the director of [Human Services] **the licensing agency** may delegate authority under this section to personnel other than of the [department] **licensing agency**.

(8) The [department] **licensing agency** 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.

(9) The [department] **licensing agency** shall establish by rule the maximum capacity of adult foster homes, including all nonrelated and related persons receiving residential care and day care.

(10) 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.

SECTION 791p. ORS 443.780 is amended to read:

443.780. (1) The director of [Human Services] **the licensing agency** 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 (5) applies regardless of any exceptions granted to a county agency.

SECTION 791q. ORS 443.785 is amended to read:

443.785. The [Department of Human Services] **licensing agency** may not require an adult foster home that elects to provide care for a Medicaid recipient to admit an additional Medicaid resident under a contract with the [department] **agency**.

SECTION 791r. ORS 443.790 is amended to read:

443.790. (1) In addition to any other liability or penalty provided by law, the director of [Human Services] **the licensing agency** 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 of Human Services] **licensing agency** 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) The director shall impose a civil penalty of \$250 on a provider who violates ORS 443.725 (3).

(4) The director shall impose a civil penalty of not less than \$250 nor more than \$500 on a provider who admits a resident knowing that the resident's care needs exceed the license classification of the provider if the admission places the resident or other residents at grave risk of harm.

(5)(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.

(6) 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.

(7) The [department] **licensing agency** shall adopt rules establishing objective criteria for the imposition and amount of civil penalties under this section.

SECTION 791s. ORS 443.795 is amended to read:

443.795. (1) Any civil penalty under ORS 443.790 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, 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 of [Human Services] **the licensing agency**.

(3) The [Department of Human Services] **licensing agency** shall conduct the hearing and issue the final order within 180 days after any hearing request.

SECTION 792. ORS 443.865 is amended to read:

443.865. (1) Upon the recommendation of the Oregon Hospice Association, the [Department of Human Services] **Oregon Health Authority** shall enforce compliance with the provisions of ORS 443.860 (1), (3), (4) and (5).

(2) The [Department of Human Services] **authority** shall adopt rules pursuant to ORS chapter 183 to implement subsection (1) of this section. Depending upon the seriousness of the noncompliance, the enforcement mechanisms to be used shall include, but not be limited to, the imposition of civil penalties and the issuance of an order to cease operations.

SECTION 793. ORS 443.870 is amended to read:

443.870. (1) The Oregon Hospice Association shall maintain and operate a registry of all certified and accredited hospice programs and all developing hospice programs and shall make such records available to the public.

(2) Hospice programs on the registry shall provide utilization data requested by the Oregon Hospice Association.

(3) The Oregon Hospice Association shall compile data received under subsection (2) of this section and annually report the data to the [Department of Human Services] **Oregon Health Authority**.

NOTE: Sections 794 and 795 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 796. ORS 443.991 is amended to read:

443.991. (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.

(3) [In addition,] The Department of Human Services may commence an action to enjoin operation of a [residential facility] **residential care facility, residential training facility or residential training home:**

(a) [When a residential facility] **If the facility or home** 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 **or homes** has been allowed.

(4) The Oregon Health Authority may commence an action to enjoin operation of a residential treatment facility or residential treatment home:

(a) If the facility or home 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 or homes has been allowed.

[3] **(5)** Violation of ORS 443.725 is punishable as a Class C misdemeanor.

[4] **(6)** 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] **(7)** Violation of ORS 443.881 is punishable as a Class C misdemeanor.

SECTION 797. ORS 444.300 is amended to read:

444.300. (1) Subject to available funding, including gifts, grants or donations, the [*Department of Human Services*] **Oregon Health Authority** shall establish a uniform, statewide database for the collection of information on Type I and Type II diabetes occurring in children in Oregon. The purposes of the database shall be to collect and serve as a repository for data about the prevalence and incidence of diabetes occurring in the pediatric population of this state and to make the data available for scientific and medical research and for assistance in making decisions about the allocation of public resources.

(2) The database established by subsection (1) of this section shall include data provided to the [*department*] **authority** by schools and physicians as required by ORS 444.310 and 444.320.

(3) The [*department*] **authority** shall adopt rules:

(a) Necessary to carry out the purposes of ORS 444.300 to 444.330, including but not limited to the reporting format and the effective date after which reporting by schools and physicians shall be required; and

(b) Under which confidential data may be used by third parties to conduct research and studies for the public good.

SECTION 798. ORS 444.310 is amended to read:

444.310. The [*Department of Human Services*] **Oregon Health Authority** shall conduct an annual survey, to be completed by June 15, of all public schools, public charter schools and registered private schools in Oregon to collect data about diabetes occurring in students. Each school surveyed shall report to the [*department*] **authority** for each student enrolled at the school who has Type I or Type II diabetes:

(1) The name and address of the student;

(2) The gender of the student;

(3) The date of birth of the student;

(4) The type of diabetes diagnosed; and

(5) The date of diagnosis.

SECTION 799. ORS 444.320 is amended to read:

444.320. (1) As used in this section, "child" means an individual 18 years of age or younger.

(2) In accordance with ORS 444.300, upon diagnosing or first treating a child with Type I or Type II diabetes, a physician shall report to the [*Department of Human Services*] **Oregon Health Authority**:

(a) The name and address of the child;

(b) The gender of the child;

(c) The date of birth of the child;

(d) The type of diabetes the child has; and

(e) The date of diagnosis or first treatment by the reporting physician.

SECTION 800. ORS 444.330 is amended to read:

444.330. All identifying information regarding individual children that is reported to the [Department of Human Services] **Oregon Health Authority** pursuant to ORS 444.300 to 444.330 shall be confidential and privileged. Except as required in connection with the administration or enforcement of public health laws or rules, no public health official, employee, agent or other person entitled to access or use data under ORS 444.300 to 444.330 shall be examined in an administrative or judicial proceeding as to the existence or contents of data in the database established under ORS 444.300 to 444.330. Research and studies conducted using confidential data from the statewide database must be reviewed and approved by the body used by the [department] **authority** as the Committee for the Protection of Human Research Subjects and established in accordance with 45 C.F.R. 46.

SECTION 801. ORS 445.010 is amended to read:

445.010. As used in this chapter, unless the context requires otherwise:

(1) "Ambulance operator" means any person operating an ambulance for hire.

(2) "**Authority**" means the **Oregon Health Authority**.

[(2)] (3) "Care" means:

(a) Treatment in and by a hospital.

(b) Professional services of a doctor.

(c) Professional services of a nurse.

(d) Medicines, substances, articles, appliances or physical therapy supplied on the prescription or order of the doctor in charge of the case.

(e) Transportation and services by an ambulance operator.

(f) Supplying prosthetic appliances and services.

(g) Any combination of any two or more of the services listed in this subsection.

(h) Professional services of a licensed physical therapist.

[(3)] (4) "Claimant" means a hospital, doctor, nurse, pharmacy, ambulance operator, supplier of prosthetic appliances and services or licensed physical therapist, who supplies care to an indigent patient, and who files a claim for charges therefor pursuant to this chapter. In respect of a hospital, it includes the operator or managing officer thereof. "Claimant" also means an indigent patient, or a personal representative of the patient after the death of the patient, but claims allowed shall be paid directly to those who supply care to the indigent patient; and an indigent claimant, or personal representative of the patient, has no right of appeal under ORS 445.160 (1969 Replacement Part).

[(4)] "Department" means the *Department of Human Services*.]

(5) "Doctor" means a person licensed by the appropriate board of this state to practice one or more of the healing arts.

(6) "Hospital" includes nursing homes and means any institution that has a provider agreement with the [department] **authority** and which admits and cares for patients suffering from motor vehicle injuries and applies for the benefits of this chapter in the manner provided in ORS 445.110.

(7) "Indigent patient" means a person who has suffered a motor vehicle injury and who is unable to pay the cost of the care supplied on account of such injury and, except in the case of a claim filed after a claim arising out of the same motor vehicle injury has been allowed by the [department] **authority** or finally adjudged affirmatively by a court on appeal, whose account therefor remains unpaid at the expiration of 90 days after the termination of the care and who is not entitled to the benefits of the Workers' Compensation Law of this state or any other state or country on account of such injury.

(8) "Motor vehicle injury" means any personal injury suffered by a human being, and accidentally caused in, by, or as the proximate result of, the movement of a motor vehicle on a public way, street or highway within this state, whether the injured person is the operator of the vehicle, a passenger in the same or another vehicle, a pedestrian or whatever the relationship of the injured person to the movement of the vehicle, and whether or not the vehicle is under the control of a human being at the time of the injury.

(9) "Nurse" means a person registered or licensed to practice nursing by the Oregon State Board of Nursing.

(10) "Pharmacy" means a place of business licensed by the State Board of Pharmacy, where drugs, medicines, prescriptions, chemicals or poisons are compounded, dispensed or sold at retail.

(11) "Supplier of prosthetic appliances and services" means a place of business or person licensed to manufacture or supply prosthetic appliances and services.

(12) "Licensed physical therapist" means a physical therapist within the State of Oregon licensed by the Physical Therapist Licensing Board.

SECTION 802. ORS 445.030 is amended to read:

445.030. (1) There is created a fund to be known as the Motor Vehicle Accident Fund, to be held and deposited by the State Treasurer in such banks as are authorized to receive deposits of the General Fund.

(2) All moneys received by the [*Department of Human Services*] **Oregon Health Authority** under this chapter shall forthwith be paid to the State Treasurer, and shall become a part of the fund.

(3) The following shall be paid from the fund:

(a) All claims and benefits allowed by the [*department*] **authority** or finally adjudged affirmatively by a court on appeal in the amounts allowed or adjudged and within the limitations of ORS 445.060 and 445.070.

(b) All expenses of litigation incurred by the [*department*] **authority** on any appeal.

(c) All court costs and disbursements assessed against the [*department*] **authority**.

(d) All salaries, clerk hire, advances and reimbursement of travel costs and expenses incurred by the [*department*] **authority** in the administration of this chapter.

(e) Expenses incurred by the [*department*] **authority** in the administration of the Emergency Medical Services and Trauma Systems Program created pursuant to ORS 431.623. The total amount of all payments from the fund for purposes of this paragraph shall be equal to \$891,450 each biennium.

(4) Liability for payment of claims or judgments thereon, or both, and expenses authorized by this chapter shall be limited to the fund and all additions thereto made under this chapter.

SECTION 803. ORS 445.050 is amended to read:

445.050. The [*Department of Human Services*] **Oregon Health Authority** may:

(1) Hear and determine all questions within its jurisdiction.

(2) Promulgate and enforce all rules and regulations as may be proper in the administration and enforcement of this chapter.

SECTION 804. ORS 445.070 is amended to read:

445.070. If it is made to appear to the [*Department of Human Services*] **Oregon Health Authority** that the limitations of ORS 445.060 are not sufficient to provide necessary and adequate care of an indigent patient and that the condition of the indigent patient warrants such action, the [*department*] **authority**, in its sole discretion, the exercise of which shall be conclusive and not in any wise subject to review, may authorize the supplying of additional care to the indigent patient of the same type as the types of initial care authorized by this chapter and may pay for the same from the Motor Vehicle Accident Fund. No claim for additional care shall be enforceable under this chapter unless the [*department*] **authority** first approves and authorizes in writing the supplying of such additional care. No single authorization shall be for more than:

(1) For additional care supplied by a hospital or hospitals, \$500.

(2) For additional care supplied by a doctor or doctors, \$300.

(3) For additional care supplied by a nurse or nurses, \$200.

(4) For additional care supplied by a pharmacy or pharmacies, \$100.

(5) For additional care supplied by an ambulance operator or ambulance operators, \$50.

(6) For additional care supplied by a supplier or suppliers of prosthetic appliances and services, \$100.

(7) For additional care supplied by a licensed physical therapist or licensed physical therapists, \$100.

SECTION 805. ORS 445.090 is amended to read:

445.090. (1) At the time of filing a claim under this chapter, the claimant shall submit to the [Department of Human Services] **Oregon Health Authority** such information and data as the [department] **authority** may reasonably require.

(2) A claim filed under this chapter must be filed with the [department] **authority** within one year after the termination of the care supplied by the claimant. However, in computing the time there shall not be included that period beginning when any claim under ORS chapter 656 arising out of the same motor vehicle accident is filed by the indigent patient with the [department] **authority**, and ending when that claim has been finally decided.

SECTION 806. ORS 445.110 is amended to read:

445.110. Each claim shall be made in writing in the form prescribed by the [Department of Human Services] **Oregon Health Authority**, and shall show, and be accompanied by, the following matters and things:

(1) The name and last-known post-office address of the person to whom care has been given.

(2) The number of days' care, with the dates of admission to the hospital and of discharge therefrom or other termination of care.

(3) The amount of the claim.

(4) A statement in writing showing the effort made by the hospital to collect the amount of the claim, the facts indicating the indigency of the patient, and the amount, if any, of money received from the patient or others in payment of the account of the patient.

(5) If reasonably obtainable, the affidavit of the indigent patient or of the person or agency, if any, responsible for the patient, and, if reasonably obtainable, the statement in writing of a public or private agency engaged in the relief of the poor, verifying the indigency of the patient. If the affidavit or statement does not accompany the claim, and it is alleged in the claim that such absence is owing to the fact that the affidavit or statement is not reasonably obtainable, the claim shall set forth the facts upon which such assertion is based.

(6) Any other information and data the [department] **authority** may reasonably require.

SECTION 807. ORS 445.130 is amended to read:

445.130. For the purposes of claims under ORS 445.110 and 445.120, an indigent patient who is not otherwise able to pay the charges for care supplied shall not be deemed to be able to pay them because a third person might be held liable in an action to recover damages on account of the motor vehicle injury, if an action has not been commenced. If an action has been commenced, the claim shall show that fact. In that event the [Department of Human Services] **Oregon Health Authority** may suspend the determination of the claim until the action has been terminated and from time to time require the claimant to supply such further information and data in respect of the action as the [department] **authority** may deem necessary in order to determine the ultimate ability of the patient to pay the charges for which the claim is filed.

SECTION 808. ORS 445.140 is amended to read:

445.140. The [Department of Human Services] **Oregon Health Authority** shall examine and audit each claim filed with it under this chapter. From the information and data contained in the claim, the reports of the claimant, the documents so accompanying and supporting the claim and such other evidence as it may reasonably require or itself adduce, the [department] **authority** shall find and determine:

(1) Whether or not the claim has been filed within the time limited in ORS 445.090.

(2) Whether or not the claim is predicated upon care supplied to a person suffering from a motor vehicle injury.

(3) Whether or not the injured person is unable to pay the charges for which the claim is filed, within the meaning of ORS 445.020.

(4) Whether or not the claimant has made reasonable and timely effort to effect collection of its claim.

SECTION 809. ORS 445.150 is amended to read:

445.150. (1) If, in the matter of the claim, the [Department of Human Services] **Oregon Health Authority** finds and determines in the affirmative in respect of items listed in ORS 445.140, [it] **the**

authority shall, by its order made and filed in the matter, allow the claim in such amount, not exceeding the limitations in ORS 445.060 and 445.070, less such amount as has been paid on the account.

(2) If in its judgment the maintenance of the solvency of the Motor Vehicle Accident Fund so requires, the [department] **authority** may make payment in monthly installments of any claim which has been allowed by it, or finally adjudged affirmatively by a court on appeal.

(3) If the [department] **authority** finds and determines in the negative in respect of any item listed in ORS 445.140, [it] **the authority** shall, by its order made and filed therein, reject the claim.

(4) The [department] **authority** promptly shall serve the claimant with a copy of its order, addressed to the claimant at the claimant's last-known post-office address as shown by the records and files of the [department] **authority**.

SECTION 810. ORS 445.180 is amended to read:

445.180. (1) If it comes to the knowledge of a claimant who has received payment of a claim under this chapter that the patient in respect of whom the claim has been paid, or any other person chargeable by law with the care or support of the patient, has been paid, or is able to pay, the amount of the claim, the claimant shall diligently pursue such payment.

(2) A claimant who has received payment of a claim from the [Department of Human Services] **Oregon Health Authority** under this chapter shall inform the [department] **authority** promptly and in writing if:

(a) The claimant receives any payment from or on behalf of the patient in respect of whom the claim has been paid or from any person chargeable by law with the care or support of the patient;

(b) The claimant knows or has reason to believe that the patient or any person chargeable by law with the care or support of the patient is able to pay the amount of the claim or any part thereof; or

(c) The claimant or any person on behalf of the claimant institutes an action against the patient or any person chargeable by law with the care or support of the patient to recover all or part of the amount of the claim.

(3) All moneys paid to or for the use or benefit of the claimant by or on behalf of the patient shall, after deduction of the reasonable cost of recovering them, be paid to the [department] **authority** for deposit in the Motor Vehicle Accident Fund.

SECTION 811. ORS 445.185 is amended to read:

445.185. When a claimant fails to pursue payment as required by ORS 445.180 or to pay to the [Department of Human Services] **Oregon Health Authority** the amount required by ORS 445.180 to be paid, the [department] **authority** shall, after 60 days, deduct the amount paid by it on the claim from any subsequent payment made to the claimant unless it is made to appear to the satisfaction of the [department] **authority** that:

(1) Upon due and diligent search and inquiry neither the patient nor any person chargeable by law with the care or support of the patient can be found;

(2) An action against the patient or a person chargeable by law with the care or support of the patient has been instituted and is pending; or

(3) An action has been prosecuted to final judgment, all legal remedies for satisfaction of the judgment have been exhausted and the judgment has not been collected.

SECTION 812. ORS 446.310 is amended to read:

446.310. As used in ORS 446.310 to 446.350, unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[1] (2) **“Camping vehicle”** means either a vacation trailer or a self-propelled vehicle or structure equipped with wheels for highway use and that is intended for human occupancy and is being used for vacation and recreational purposes, but not for residential purposes, and is equipped with plumbing, sink or toilet.

[2] (3) **“Construction”** means work regulated by the state building code as defined in ORS 455.010.

[3] **“Department” means the Department of Human Services.**]

(4) "Director" means the Director of [*Human Services*] **the Oregon Health Authority**.

(5) "Health official" means a local public health administrator appointed pursuant to ORS 431.418.

(6) "Hostel" means any establishment having beds rented or kept for rent on a daily basis to travelers for a charge or fee paid or to be paid for rental or use of facilities and that is operated, managed or maintained under the sponsorship of a nonprofit organization that holds a valid exemption from federal income taxes under the Internal Revenue Code of 1954 as amended.

(7) "Organizational camp" includes any area designated by the person establishing, operating, managing or maintaining the same for recreational use by groups or organizations that include but are not limited to youth camps, scout camps, summer camps, day camps, nature camps, survival camps, athletic camps, camps that are operated and maintained under the guidance, supervision or auspices of religious, public and private educational systems and community service organizations.

(8) "Picnic park" means any recreation park that is for day use only and provides no recreation vehicle or overnight camping spaces.

(9) "Recreation park" means any area designated by the person establishing, operating, managing or maintaining the same for picnicking, overnight camping or use of recreational vehicles by the general public or any segment of the public. "Recreation park" includes but is not limited to areas open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to, those areas divided into two or more lots, parcels, units or other interests for purposes of such use.

(10) "Regulating agency" means, with respect to a tourist facility, the [*Department of Human Services*] **Oregon Health Authority**.

(11) "Tourist facility" means any travelers' accommodation, hostel, picnic park, recreation park and organizational camp.

(12) "Travelers' accommodation" includes any establishment, which is not a hostel, having rooms, apartments or sleeping facilities rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental or use of facilities.

SECTION 813. ORS 446.320 is amended to read:

446.320. (1) No person shall establish, operate, manage or maintain a tourist facility, without a license from the Director of [*Human Services*] **the Oregon Health Authority**.

(2) Organizational camps operated under rental or leasehold agreements may be licensed either to the landlord or to the tenant provided that the license holder shall be responsible for compliance with ORS 446.310 to 446.350 and the rules adopted thereunder.

SECTION 814. ORS 446.321 is amended to read:

446.321. (1) Every applicant for licensing of a tourist facility as defined in ORS 446.310 and required by ORS 446.320 shall pay to the [*Department of Human Services*] **Oregon Health Authority** a fee established by [*department*] **the authority** by rule. The fee may not exceed \$60, except that recreation parks shall pay an additional fee not to exceed \$2 for each space.

(2) Rules adopted pursuant to subsection (1) of this section shall be adopted in accordance with ORS chapter 183.

SECTION 815. ORS 446.322 is amended to read:

446.322. Upon receipt of a completed application on [*a Department of Human Services*] **an Oregon Health Authority** form, required fee, and after representation by the applicant that the facility is in compliance with the provisions of ORS 446.310 to 446.350, and the rules adopted pursuant thereto, and the requirements of the Department of Consumer and Business Services, the [*Department of Human Services*] **authority** shall issue a license, unless there is reason to believe noncompliance exists.

SECTION 816. ORS 446.324 is amended to read:

446.324. (1) If any applicant for licensing or any person to whom a license has been issued fails to comply with the provisions of ORS 446.310 to 446.350 or with the rules adopted pursuant thereto, the [*Department of Human Services*] **Oregon Health Authority** may deny issuance of, suspend or revoke the license or assess a civil penalty.

(2) Hearings on the denial, suspension or revocation of a license or on assessing a civil penalty shall be conducted as a contested case in accordance with ORS chapter 183.

SECTION 817. ORS 446.325 is amended to read:

446.325. (1) Public entities, private persons or nonprofit organizations described under ORS 446.265 (3), timber companies and private utilities shall not establish or operate a recreation park without complying with the rules of the [*Department of Human Services*] **Oregon Health Authority** and securing the approval of the Director of [*Human Services*] **the Oregon Health Authority** or designee but shall be exempt from the licensing requirement of ORS 446.320. The director or designee may delegate, to a health official having sufficient environmental health specialists, the authority to approve such recreation parks.

(2) ORS 446.310 to 446.350 do not apply to:

(a) Any structure designed for and occupied as a single family residence in which no more than two sleeping rooms are provided on a daily or weekly basis for the use of no more than a total of six travelers or transients at any one time for a charge or fee paid or to be paid for the rental or use of the facilities;

(b) Any temporary camping sites used solely and incidentally in the course of backpacking, hiking, horseback packing, canoeing, rafting or other expedition, unless the expedition is part of an organizational camp program; or

(c) A yurt, as defined in ORS 446.265, that is used as a living unit in transitional housing accommodations.

SECTION 818. ORS 446.330 is amended to read:

446.330. In accordance with ORS chapter 183, the [*Department of Human Services*] **Oregon Health Authority** may adopt any rules necessary for the administration of ORS 446.310 to 446.350 and 446.990, including but not limited to rules, concerning the construction, operation and use of tourist facilities that are necessary to protect the health and welfare of persons using these facilities. The rules shall pertain but not be restricted to water supply, final sewage disposal, surface drainage, maintenance, insect and rodent control, garbage disposal, designation and maintenance of camping space and the cleanliness of the premises.

SECTION 819. ORS 446.335 is amended to read:

446.335. (1) The Director of [*Human Services*] **the Oregon Health Authority** or designee may inspect every tourist facility to determine whether it conforms with ORS 446.310 to 446.350 and the rules adopted pursuant thereto. A person operating such facility shall permit the director or designee access to all of the facility at any reasonable time.

(2) The operator of a seasonal facility which customarily is closed for 120 days or more in any 12-month period shall notify the director in writing of the intention to reopen at the beginning of a season. Notice shall be given at least 30 days prior to the reopening.

SECTION 820. ORS 446.340 is amended to read:

446.340. (1) The owner or operator of a recreation park or organizational camp is responsible for the sanitary condition of the park grounds and buildings.

(2) If sanitary facilities are not provided in a recreation park or organizational camp for the safe disposal of sewage or other wastes from a camping vehicle, a notice shall be posted in a conspicuous place stating that camping vehicles are permitted overnight only if the vehicle's waste holding tanks are used.

(3) Notwithstanding ORS 446.330, the [*Department of Human Services*] **Oregon Health Authority** shall not require an owner or operator of a recreation park or organizational camp to provide both toilets and dumping stations.

SECTION 821. ORS 446.345 is amended to read:

446.345. No person shall:

(1) Use kitchen or toilet facilities in a camping vehicle being operated on a highway or parked overnight at a place where sanitary facilities are not provided unless the person makes provision whereby sewage and other waste materials can be held in watertight and sanitary containers of a type approved by the [*Department of Human Services*] **Oregon Health Authority**.

(2) Empty a container described in subsection (1) of this section except into a public sewerage system, septic tank or cesspool of a type approved by the [department] **authority**. However, in isolated areas where space is not available in a recreation park or organizational camp and such facilities are not available, these containers may be emptied into the ground if all sewage and other waste materials are buried at least one foot below the surface of the ground.

(3) When using a recreation park or organizational camp, create an insanitary condition or deposit putrescible or nonputrescible waste any place other than in appropriate containers designated for such purposes.

SECTION 822. ORS 446.347 is amended to read:

446.347. (1) In addition to any other penalty provided by law, any person who violates any rule of the [Department of Human Services] **Oregon Health Authority** relating to the construction, operation or maintenance of a tourist facility or part thereof may incur a civil penalty not to exceed \$1,000 per violation.

(2) No civil penalty prescribed under subsection (1) of this section shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the [department] **authority** or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

SECTION 823. ORS 446.348 is amended to read:

446.348. (1) The Director of [Human Services] **the Oregon Health Authority** shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation.

(2) The director may impose the penalty without hearing but only after the notice required by ORS 446.347 (2). In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, 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, orders and permits pertaining to the water system.

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

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the [Department of Human Services] **Oregon Health Authority** considers proper and consistent with the public health and safety.

SECTION 824. ORS 446.350 is amended to read:

446.350. The Tourist Facility Account is established in the General Fund of the State Treasury. All moneys received under ORS 446.310 to 446.350 by the Director of [Human Services] **the Oregon Health Authority** shall be credited to the Tourist Facility Account. All moneys in the account are appropriated continuously to the [Department of Human Services] **Oregon Health Authority** for the purpose of administering and enforcing ORS 446.310 to 446.350.

SECTION 825. ORS 446.425 is amended to read:

446.425. (1) The Director of [Human Services] **the Oregon Health Authority** shall delegate to any county board of commissioners which requests any of the [authority, responsibilities] **duties** and functions of the director under ORS 446.310, 446.320, 446.330 to 446.340, 446.345, 446.350 and 446.990 if the director determines that the county is able to carry out the rules of the [Department of Human Services] **Oregon Health Authority** relating to fee collection, inspections, enforcement and issuance and revocation of permits and licenses in compliance with standards for enforcement by the counties and monitoring by the [department] **authority**. Such standards shall be established by the [department] **authority** in consultation with the appropriate county officials and in accordance with ORS 431.345. The [department] **authority** shall review and monitor each county's performance under this subsection. In accordance with ORS chapter 183, the director may suspend or rescind a delegation under this subsection. If it is determined that a county is not carrying out such rules or the delegation is suspended, the unexpended portion of the fees collected under subsection (2) of this section

shall be available to the [department] **authority** for carrying out the [authority, responsibility] **duties** and functions under this section.

(2) The county may determine the amount of, and retain, any fee for any function undertaken pursuant to subsection (1) of this section. The amount of the fees shall not exceed the costs of administering the inspection program. The county, quarterly, shall remit 15 percent of an amount equal to the state licensing fee or 15 percent of the county license fee whichever is less, to the [department] **authority** for consultation service and maintenance of the statewide program.

(3) In any action, suit or proceeding arising out of county administration of functions pursuant to subsection (1) of this section and involving the validity of a rule adopted by the [department, the department] **authority, the authority** shall be made a party to the action, suit or proceeding.

SECTION 826. ORS 447.124 is amended to read:

447.124. For the purpose of enforcing ORS 447.118 and the rules adopted thereunder, the Department of Consumer and Business Services, with the assistance of the [Department of Human Services] **Oregon Health Authority**:

(1) May conduct periodic inspections of any compost toilet;

(2) Upon making a finding that a compost toilet is in violation of the rules adopted pursuant to ORS 447.118 (2), may issue an order requiring the owner of the dwelling served by the compost toilet to take action necessary to correct the violation; and

(3) Upon making a finding that a compost toilet presents or threatens to present a public health hazard creating an emergency requiring immediate action to protect the public health, safety or welfare, may issue an order requiring the owner of the dwelling served by the compost toilet to take any action necessary to remove such hazard or threat thereof. If such owner fails to take the actions required by such order, the [Department of Consumer and Business Services] **department** shall take such action, itself or by contract with outside parties, as necessary to remove the hazard or threat thereof. The department shall keep a record of all necessary expenses incurred by the department in carrying out such action, including a reasonable charge for costs incurred and equipment and materials utilized by the state. Any owner who fails to take action required by an order issued under this subsection shall be responsible for such necessary expenses incurred by the state. Based on the record compiled by the department, an owner responsible for expenses due to the failure of a manufacturer, distributor or person to comply with the rules adopted under ORS 447.118 (2) shall have a setoff against the bond or other security forfeited under ORS 447.118 (3) to the extent that such expenses are due to such failure of the manufacturer, distributor or person. The department shall make a finding and enter an order against the owner for the necessary expenses. Orders issued under this section may be appealed pursuant to ORS chapter 183 but not as a contested case. Any amount due the department under this subsection and not paid in full within 30 days after the order is entered, or, if the order is appealed, within 30 days after there is no further right to appeal, shall become a lien upon the dwelling of the owner. The department shall file a notice of the lien with the recording officer of the county in which the dwelling is located and the recording officer shall record the notice in a manner designed to appear in the mortgage records of the county.

(4) The department may contract with any state or local agency for the purpose of carrying out the provisions of this section.

SECTION 827. ORS 448.005 is amended to read:

448.005. As used in ORS 448.005 to 448.090, unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[1] (2) **“Bathhouse” means a structure that contains dressing rooms, showers and toilet facilities for use with an adjacent public swimming pool.**

[2] **“Department” means the Department of Human Services.**

(3) **“Director” means the Director of [Human Services] the Oregon Health Authority.**

(4) **“Person” has the meaning given that term in ORS 174.100, but also includes municipalities, recreation districts, counties and state agencies or instrumentalities.**

(5) "Public spa pool" means a public swimming pool or wading pool designed primarily to direct water or air-enriched water under pressure onto the bather's body with the intent of producing a relaxing or therapeutic effect.

(6) "Public swimming pool" means an artificial structure, and its appurtenances, that contains water more than two feet deep, is expressly designated or used with the knowledge and consent of the owner or operator for swimming or recreational bathing, and is for the use of any segment of the public. "Public swimming pool" includes, but is not limited to, swimming pools owned or operated by:

- (a) Travelers' accommodations;
- (b) Recreation parks;
- (c) Colleges;
- (d) Schools;
- (e) Organizational camps as defined in ORS 446.310;
- (f) Clubs;
- (g) Associations;
- (h) Business establishments for their patrons or employees;
- (i) Private persons and that are open to the public;
- (j) Recreation districts;
- (k) Municipalities;
- (L) Counties; or
- (m) State agencies.

(7) "Public wading pool" means an artificial structure, and its appurtenances, that contains water less than two feet deep, is expressly designated or used with the knowledge and consent of the owner or operator for wading or recreational bathing, and is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

(8) "Recreation park" means those facilities as defined by ORS 446.310.

(9) "Travelers' accommodation" means those facilities as defined by ORS 446.310.

(10) "Variance" means written permission from the [*department*] **authority** for a public swimming pool, public spa pool or public wading pool to be operated when it does not comply with all the applicable rules for public swimming pools, public spa pools or public wading pools.

SECTION 828. ORS 448.011 is amended to read:

448.011. The [*Department of Human Services*] **Oregon Health Authority** shall make such rules pertaining to the submission of plans for construction, issuance of permits, design, construction, size, shape, purification equipment, piping, operation, sanitation and accident prevention for public swimming pools, public spa pools, public wading pools and bathhouses as it deems necessary.

SECTION 829. ORS 448.020 is amended to read:

448.020. No person shall construct or perform a major alteration or reconstruction of a public swimming pool, public spa pool, public wading pool or bathhouse without a permit to do so from the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 830. ORS 448.030 is amended to read:

448.030. (1) Any person desiring to construct any public swimming pool, public spa pool, public wading pool or bathhouse shall file application for a permit to do so with the [*Department of Human Services*] **Oregon Health Authority**.

(2) The application shall be accompanied by a description of the sources of water supply, amount and quality of water available and intended to be used, method and manner of water purification, treatment, disinfection, heating, regulating and cleaning, lifesaving apparatus, and measures to insure safety of bathers, measures to insure personal cleanliness of bathers, methods and manner of washing, disinfecting, drying and storing bathing apparel and towels, and all other information and statistics that may be required by the [*department. The department*] **authority. The authority** shall either approve or reject the application based upon the plans submitted and either issue or deny the construction permit.

(3) After a construction permit is issued and upon request, the [department] **authority** shall cause an investigation to be made of the proposed public swimming pool, public spa pool, public wading pool or bathhouse. If the [department] **authority** determines that the public swimming pool, public spa pool, public wading pool or bathhouse complies with the rules of the [department] **authority**, it shall issue a final approval which shall authorize the issuance of a license.

(4) An applicant for a permit to construct a public swimming pool, public spa pool, public wading pool or bathhouse to be owned, operated or maintained by a person for profit, or in conjunction with a travelers' accommodation or recreation park, shall pay the [department] **authority** a plan review fee of \$100 and a construction permit fee of \$200, which entitles the holder to two inspections toward final approval. The [department] **authority** shall not impose any new standards after a second or any subsequent inspection. For any subsequent construction inspection necessary, the permit holder shall pay \$100 for each inspection.

SECTION 831. ORS 448.035 is amended to read:

448.035. (1) No person shall operate or maintain a public swimming pool, public spa pool, public wading pool or bathhouse without a license to do so from the [Department of Human Services] **Oregon Health Authority**.

(2) An annual fee of \$100 shall be paid for a license to operate a public swimming pool, public spa pool, public wading pool or bathhouse. The annual fee for a license for a second or additional public swimming pool, public spa pool, public wading pool or bathhouse, or any combination thereof, on the same site shall be an amount equal to 60 percent of the fee for the first license.

(3) Licenses issued under this section expire annually on a date set by rule.

SECTION 832. ORS 448.037 is amended to read:

448.037. (1) A person applying for a variance shall submit a variance application accompanied by a fee of \$150 to the [Department of Human Services. If the department] **Oregon Health Authority**. If the **authority** approves the application, a variance shall be granted, stating the terms and conditions thereof.

(2) The [department] **authority** may waive the fee for variance requests precipitated by change in the [department's] **authority's** rules.

(3) The [department] **authority** may not delegate the responsibility under subsection (1) of this section under the provision of ORS 448.100.

SECTION 833. ORS 448.040 is amended to read:

448.040. For the purposes of ORS 448.005 to 448.090, the Director of [Human Services] **the Oregon Health Authority** may at all reasonable times enter upon any part of the premises of public bathing and swimming places to make examination and investigation to determine the sanitary conditions of such places and whether ORS 448.005 to 448.090 or the rules of the [Department of Human Services] **Oregon Health Authority** pertaining to public swimming pools, public spa pools, public wading pools or bathhouses are being violated.

SECTION 834. ORS 448.051 is amended to read:

448.051. (1) The Director of [Human Services] **the Oregon Health Authority** shall inspect all public swimming pools, public spa pools, public wading pools and bathhouses to determine the sanitary conditions of such places and whether ORS 448.005 to 448.090 and the rules of the [Department of Human Services] **Oregon Health Authority** pertaining to public swimming pools, public spa pools, public wading pools and bathhouses are being violated.

(2) If the director determines that a public swimming pool, public spa pool, public wading pool or bathhouse is being operated or maintained in violation of the rules of the [department] **authority** or is found to be insanitary, unclean or dangerous to public health or safety the director may suspend, revoke or deny the permit or license issued under ORS 448.030 or 448.035 in accordance with ORS chapter 183.

SECTION 835. ORS 448.060 is amended to read:

448.060. (1) No public swimming pool, public spa pool, public wading pool or bathhouse shall remain open to the public after the permit or license to operate such facilities has been suspended, denied or revoked.

(2) Any public swimming pool, public spa pool, public wading pool or bathhouse constructed, operated or maintained contrary to ORS 448.005 to 448.090, is a public nuisance, dangerous to health.

(3) Such nuisance may be abated or enjoined in an action brought by the Director of [*Human Services*] **the Oregon Health Authority** or may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health.

SECTION 836. ORS 448.100 is amended to read:

448.100. (1) The Director of [*Human Services*] **the Oregon Health Authority** shall delegate to any county board of commissioners that requests any of the [*authority, responsibilities*] **duties** and functions of the [*Director of Human Services*] **director** under ORS 448.005, 448.011, 448.020 to 448.035, 448.040 to 448.060 and this section if the director determines that the county is able to carry out the rules of the [*Department of Human Services*] **Oregon Health Authority** relating to fee collection, licensing, inspections, enforcement and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by the [*department*] **authority**. Such standards shall be established by the [*department*] **authority** in consultation with the appropriate county officials and in accordance with ORS 431.345. The [*department*] **authority** shall review and monitor each county's performance under this subsection. In accordance with ORS chapter 183, the director may suspend or rescind a delegation under this subsection. If it is determined that a county is not carrying out such rules or the delegation is suspended, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the [*department*] **authority** for carrying out the [*authority, responsibility*] **duties** and functions under this section.

(2) The county may determine the amount of, and retain, any fee for any function undertaken pursuant to subsection (1) of this section or use the fee schedules pursuant to ORS 448.030 and 448.035. A county to whom licensing, inspection and enforcement authority has been delegated under this section shall collect and remit to the [*department*] **authority** a fee to support the activities of the [*department*] **authority** under this section. The fee shall be established by the [*department*] **authority** and the Conference of Local Health Officials based upon a budget and formula for funding activities described in this section. The [*department*] **authority** and the Conference of Local Health Officials shall consult with associations representing Oregon cities, special districts and the lodging industry in establishing the fee. In the event the [*department*] **authority** and the Conference of Local Health Officials cannot reach agreement on the budget and formula, the [*department*] **authority** shall submit its budget proposal to the Legislative Assembly.

(3) In any action, suit or proceeding arising out of county administration of functions pursuant to subsection (1) of this section and involving the validity of a rule promulgated by the [*department, the department*] **authority, the authority** shall be made a party to the action, suit or proceeding.

SECTION 837. ORS 448.115 is amended to read:

448.115. As used in ORS 448.115 to 448.285, 454.235 and 454.255 unless the context requires otherwise:

(1) **"Authority" means the Oregon Health Authority.**

[(1)] (2) "Connection" means the connection between a water system and a customer that enables the customer to receive potable water from the system.

[(2)] (3) "Construction standards" means criteria for constructing or installing water system facilities.

[(3)] *"Department" means the Department of Human Services.*

(4) "Director" means the Director of [*Human Services*] **the Oregon Health Authority**.

(5) "Emergency" means a condition resulting from an unusual calamity such as a flood, an earthquake or an accidental spill of hazardous material that can endanger the quality of the water produced by a water system.

(6) "Operational requirements" means requirements that prescribe the manner in which water systems must be operated.

(7) "Permit" means a document issued to a water system that authorizes it to commence or continue to operate in the State of Oregon and lists the conditions the system must meet to continue operating.

(8) "Safe drinking water" means water that is sufficiently free from biological, chemical, radiological or physical impurities such that individuals will not be exposed to disease or harmful physiological effects.

(9) "Sanitary survey" means an on-site review of the source, facilities, equipment, operation and maintenance of a water system, including related land uses, for the purpose of evaluating the capability of that water system to produce and distribute safe drinking water.

(10) "Special master" means the person appointed by the court to administrate the water system.

(11) "Variance" means permission from the agency for a water system to provide water that does not meet water quality standards.

(12) "Water supplier" means any person, group of persons, municipality, district, corporation or entity that owns or operates a water system.

(13) "Water system" means a system for the provision of water for human consumption through pipes or other constructed conveyances.

(14) "Waterborne disease" means disease caused by chemical, physical, radiological or biological agents epidemiologically associated with infection, illness or disability that is transported to human beings by water that has been ingested or through contact as in bathing or other domestic uses.

SECTION 838. ORS 448.119 is amended to read:

448.119. Before a water system is subject to regulation under ORS 448.119 to 448.285, 454.235 and 454.255, the system must have at least four service connections, or it must serve water to public or commercial premises which are used by an average of at least 10 individuals daily at least 60 days each year. In a housing subdivision of four or more living units where the water service connections of individual units are only two or three per water system, at the discretion of the Director of [Human Services, the Department of Human Services] **the Oregon Health Authority, the Oregon Health Authority** may regulate the water systems within the subdivision under ORS 448.119 to 448.285, 454.235 and 454.255.

SECTION 839. ORS 448.123 is amended to read:

448.123. (1) It is the purpose of ORS 448.119 to 448.285, 454.235 and 454.255 to:

- (a) Ensure that all Oregonians have safe drinking water.
- (b) Provide a simple and effective regulatory program for drinking water systems.
- (c) Provide a means to improve inadequate drinking water systems.

(2) In carrying out the purpose set forth in subsection (1) of this section, the [Department of Human Services] **Oregon Health Authority** shall act in accordance with the goal set forth in ORS 468B.155.

(3) If, in carrying out any duty prescribed by law, the [department] **authority** acquires information related to ground water quality in Oregon, the [department] **authority** shall forward a copy of the information to the centralized repository established pursuant to ORS 468B.167.

SECTION 840. ORS 448.131 is amended to read:

448.131. (1) The [Department of Human Services] **Oregon Health Authority** shall adopt water quality standards that are necessary to protect the public health through insuring safe drinking water within a water system.

(2) In order to insure safe drinking water, the [department] **authority** shall prescribe:

(a) Construction standards governing the performance of a water system insofar as they relate to the safety of drinking water.

(b) Standards for the operation of water systems in so far as they relate to the delivery of safe drinking water.

(c) Other standards and requirements considered necessary by the [department] **authority** to insure safe drinking water.

(3) The [department] **authority** shall require that construction and installation plans be submitted and approved before construction begins on new systems or substantial improvements are made

to old systems. The [department] **authority** may adopt rules exempting certain water systems from the plan review process.

(4) The [department] **authority** may impose and collect a fee from a water supplier for reviewing construction and installation plans.

(5) Nothing in this section authorizes the [department] **authority** to require alterations of existing facilities unless alterations are necessary to insure safe drinking water.

SECTION 841. ORS 448.135 is amended to read:

448.135. (1) The [Department of Human Services] **Oregon Health Authority** may grant variances from standards if:

(a) There is no unreasonable risk to health;

(b) The water supplier has provided sufficient evidence to confirm that the best available treatment techniques are unable to treat the water in question so that it meets maximum contaminant levels;

(c) The water supplier agrees to notify the customers of the water supplier at appropriate intervals, as determined by the [department] **authority**, why the water system is, or remains, out of compliance with standards;

(d) The water supplier agrees to adhere to a compliance schedule, if the [department] **authority** prescribes one, which outlines how the water supplier intends to achieve compliance with standards. If a schedule is prescribed, it must be reviewed and evaluated every three years; and

(e) The [department] **authority** has announced its intention to grant a variance and has either:

(A) Held a public hearing in the affected area prior to granting the variance; or

(B) Served notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the [department] **authority** may grant the variance.

(2) The [Department of Human Services] **authority** may grant variances from standards requiring the use of a specified water treatment technique if the [department] **authority**:

(a) Determines that the use of a specified water treatment technique is not necessary to protect the public health based on the nature of the raw water source for a public water system;

(b) Has conditioned the variance as required by the federal Safe Drinking Water Act, 42 U.S.C. 300g-4;

(c) Has announced its intent to grant a variance and has either:

(A) Held a public hearing in the area prior to granting the variance; or

(B) Served notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the [department] **authority** may grant the variance; and

(d) Promptly notifies the administrator of the United States Environmental Protection Agency of any variance granted, as required by the federal Safe Drinking Water Act, 42 U.S.C. 300g-4.

SECTION 842. ORS 448.140 is amended to read:

448.140. A water system that does not comply with the rules and standards of the [Department of Human Services] **Oregon Health Authority** shall be operated only after the water supplier has received a permit for the system from the [department] **authority** if:

(1) The [department] **authority** has not granted a variance from standards as provided under ORS 448.135 to the water supplier; and

(2) The water system is providing water that does not meet maximum contaminant standards as determined by an investigation conducted by the [department] **authority** under ORS 448.150.

SECTION 843. ORS 448.145 is amended to read:

448.145. (1) A permit shall be issued by the [Department of Human Services] **Oregon Health Authority** when there are economic or other compelling factors such that the water supplier is unable to install the water treatment facilities or to meet the maximum contaminant levels.

(2) The [department] **authority** shall prescribe a compliance schedule, including interim measures to eliminate the risk to health, which sets a specific time limit for the water supplier operating on a permit to install the water treatment facilities or to meet the maximum contaminant levels.

(3) For so long as the water supplier operates on a permit, [it] **the water supplier** must notify its customers at least once every three months why the water system is, or remains, out of compliance.

(4) When the [department] **authority** announces its intention to grant a permit, [it] **the authority** shall:

(a) Hold a public hearing in the affected area prior to granting the permit; or

(b) Serve notice of intent to issue the permit either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the [department] **authority** may finalize the permit.

(5) The document evidencing the permit shall contain a statement of the conditions under which the water system may operate.

SECTION 844. ORS 448.150 is amended to read:

448.150. (1) The [Department of Human Services] **Oregon Health Authority** shall:

(a) Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to ensure that the systems are not creating an unreasonable risk to health. The [department] **authority** shall provide written reports of such examinations to the local health administrators and water suppliers. The [department] **authority** may impose a fee on water suppliers to recover the costs of conducting the periodic sanitary surveys.

(b) Require regular water sampling by water suppliers to determine compliance with water quality standards established by the [department] **authority**. These samples shall be analyzed in a laboratory approved by the [department] **authority**. The results of the laboratory analysis of a sample shall be reported to the [department] **authority** by the water supplier, unless direct laboratory reporting is authorized by the water supplier. The laboratory performing the analysis shall report the validated results of the analysis directly to the [department] **authority** and to the water supplier if the analysis shows that a sample contains contaminant levels in excess of any maximum contaminant level specified in the water quality standards.

(c) Investigate any water system that fails to meet the water quality standards established by the [department] **authority**.

(d) Require every water supplier that provides drinking water that is from a surface water source to conduct sanitary surveys of the watershed as may be considered necessary by the [department] **authority** for the protection of public health. The water supplier shall make written reports of such sanitary surveys of watersheds promptly to the [department] **authority** and to the local health department.

(e) Investigate reports of waterborne disease pursuant to [its authority under] ORS 431.110 and take necessary actions as provided for in ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255 and 455.680 to protect the public health and safety.

(f) Notify the Department of Environmental Quality of a potential ground water management area if, as a result of its water sampling under paragraphs (a) to (e) of this subsection, the [Department of Human Services] **authority** detects the presence in ground water of:

(A) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or

(B) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.

(2) The notification required under subsection (1)(f) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

SECTION 845. ORS 448.153 is amended to read:

448.153. (1) The State Drinking Water Advisory Committee is created to advise and assist the [Department of Human Services] **Oregon Health Authority** on policies related to the protection, safety and regulation of public drinking water in Oregon.

(2) The committee created under this section shall consist of 15 members appointed by the Public Health Officer. The officer shall make the appointments after considering nominees from:

- (a) Public water systems of cities with a population greater than 100,000;
- (b) Privately owned water systems;
- (c) Environmental advocacy groups;
- (d) The American Council of Engineering Companies of Oregon;
- (e) The Conference of Local Health Officials created by ORS 431.330;
- (f) The League of Oregon Cities;
- (g) The League of Women Voters of Oregon;
- (h) The Oregon Association of Water Utilities;
- (i) The Oregon Environmental Health Association;
- (j) The Oregon Environmental Laboratory Association;
- (k) The Pacific Northwest Section of the American Water Works Association;
- (L) The Special Districts Association of Oregon;
- (m) Organizations representing plumbers or backflow testers;
- (n) Water consumers; and
- (o) Watershed councils.

(3) The committee shall adopt rules to govern its proceedings and shall select a chair and any other officers it considers necessary.

(4) The members shall be appointed to serve for terms of three years. A vacancy on the committee shall be filled by appointment by the Public Health Officer for the unexpired term.

(5) The committee shall meet regularly four times a year at times and places fixed by the chair of the committee. The committee may meet at other times specified by the chair or a majority of the members of the committee.

(6) The [Department of Human Services] **Oregon Health Authority** shall provide assistance and space for meetings as requested by the chair of the committee.

(7) Members of the committee shall be entitled to actual and necessary expenses as provided by ORS 292.495 (2).

SECTION 846. ORS 448.155 is amended to read:

448.155. The [Department of Human Services] **Oregon Health Authority**:

(1) May provide technical assistance and organize, coordinate and conduct training for water system personnel.

(2) Shall conduct a program designed to stimulate public participation in matters relating to water systems through public presentations, dissemination of informational materials and other similar efforts.

SECTION 847. ORS 448.160 is amended to read:

448.160. (1) The [Department of Human Services] **Oregon Health Authority** shall maintain a plan outlining actions to be taken by the [department] **authority** during emergencies relating to water systems.

(2) The [department] **authority** may require that a water supplier compile an emergency plan if it appears necessary to the Director of [Human Services] **the Oregon Health Authority**.

SECTION 848. ORS 448.165 is amended to read:

448.165. (1) Counties may develop water service plans. These plans should encourage small water systems to combine management functions and to consolidate where possible. Water service plans must be in keeping with county land use plans.

(2) Cities or counties, whichever have authority to issue building permits, must certify that the [Department of Human Services] **Oregon Health Authority** has approved the construction and installation plans of a proposed water system development and the development plan does not violate city or county water service plans before issuing a building permit.

(3) Counties or boundary commissions are authorized to approve the formation, consolidation and expansion of water systems not owned by cities in keeping with county and city plans. In doing so, counties or boundary commissions should consider whether water service is extended in a logical fashion and water systems have a financial base sufficient for operation and maintenance.

SECTION 849. ORS 448.170 is amended to read:

448.170. (1) The [*Department of Human Services*] **Oregon Health Authority** may enter into an agreement with a local governmental unit for the local governmental unit to perform the duties of the [*department*] **authority** under the Oregon Drinking Water Quality Act. The duration of the agreement, the duties to be performed and the remuneration to be paid by the [*department*] **authority** are subject to agreement by the [*department*] **authority** and the local governmental unit.

(2) In any action, suit or proceeding arising out of county administration of functions pursuant to ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255, 455.170 and 757.005 and involving the validity of a rule adopted by the [*department, the department*] **authority, the authority** shall be made a party to the action, suit or proceeding.

SECTION 850. ORS 448.175 is amended to read:

448.175. Subject to ORS chapter 183, the [*Department of Human Services*] **Oregon Health Authority**:

(1) Shall require that the water suppliers give public notice of violations in the water system.

(2) May refuse to allow expansion of or additional connections to a water system until the water system meets water quality standards and requirements.

(3) May enter an order requiring a water supplier to acquire or construct a water system that provides water [*meeting department*] **that meets the authority's** standards. When the order requires a city to acquire a water system, the system must have the majority of its facilities within the city's adopted urban growth boundary. When the order is entered upon a city, the procedure described in ORS 454.235 to 454.255 shall be followed.

(4) May enter an order requiring a water supplier that fails to comply with the schedule prescribed under ORS 448.140 to cease operation of the water system.

SECTION 851. ORS 448.180 is amended to read:

448.180. The [*Department of Human Services*] **Oregon Health Authority** may grant waivers on construction standards if the [*department*] **authority** is satisfied there will be no unreasonable risk to health.

SECTION 852. ORS 448.250 is amended to read:

448.250. (1) Whenever a water system or part thereof presents or threatens to present a public health hazard requiring immediate action to protect the public health, safety and welfare, the Director of [*Human Services*] **the Oregon Health Authority** may request the district attorney of the county wherein the system is located to institute an action. The action may be commenced without the necessity of prior administrative procedures or hearing and entry of an order or at any time during such administrative proceedings, if such proceedings have been commenced. The action may petition for a mandatory injunction compelling the water supplier to cease and desist operation or to make such improvements and corrections as are necessary to remove the public health hazard or threat thereof.

(2)(a) If the water supplier refuses to comply with the order of the court, in addition to other remedies, the court may appoint a special master to operate the water system. Costs of operation and improvement during operation by the special master are to be charged to the water supplier and may be collected by impounding revenue due to the water supplier from customers of the supplier; or, if those funds are insufficient, from other revenues due to the water supplier.

(b) The court may require sale of a water system under a special master to a responsible party if the water supplier refuses to comply with the standards and requirements of the [*Department of Human Services*] **Oregon Health Authority**.

(3) Cases filed under provisions of this section or any appeal therefrom shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(4) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisance or for recovery of damages brought by private persons or by the state on relation of any person.

SECTION 853. ORS 448.255 is amended to read:

448.255. (1) Whenever the Director of [*Human Services*] **the Oregon Health Authority** has reasonable grounds to believe that a water system or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 448.115 to 448.285, 454.235 and 454.255, the director shall give written notice to the water supplier responsible for the system.

(2) The notice required under subsection (1) of this section shall include the following:

- (a) Citation of the rule allegedly violated;
- (b) The manner and extent of the alleged violation; and
- (c) A statement of the party's right to request a hearing.

(3) The notice shall be served personally or by registered or certified mail and shall be accompanied by an order of the director requiring remedial action which, if taken within the time specified in the order, will effect compliance with the rule allegedly violated. The order shall become final unless request for hearing is made by the party receiving the notice within 10 days from the date of personal service or the date of mailing of the notice.

(4) The form of petition for hearing and the procedures employed in the hearing shall be consistent with the requirements of ORS chapter 183 and shall be in accordance with rules adopted by the [*Department of Human Services*] **Oregon Health Authority**.

(5) Hearings under this section shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(6) The order shall be affirmed or reversed by the director after hearing. A copy of the director's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon the petitioner. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case.

SECTION 854. ORS 448.268 is amended to read:

448.268. If, as a result of its activities under ORS 448.150, the [*Department of Human Services*] **Oregon Health Authority** confirms the presence in ground water drinking water supplies of contaminants resulting at least in part from suspected nonpoint source activities, the [*department*] **authority** shall declare an area of ground water concern. The declaration shall identify the substances confirmed in the ground water and all ground water aquifers that may be affected.

SECTION 855. ORS 448.271 is amended to read:

448.271. (1) In any transaction for the sale or exchange of real estate that includes a well that supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, have the well tested for nitrates and total coliform bacteria. The [*Department of Human Services*] **Oregon Health Authority** also may require additional tests for specific contaminants in an area of ground water concern or ground water management area. The seller shall submit the results of the test required under this section to the [*department*] **authority**.

(2) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction.

SECTION 856. ORS 448.273 is amended to read:

448.273. The Legislative Assembly finds that an agreement between this state and the federal government to assume primary enforcement responsibility in this state for the federal Safe Drinking Water Act is in the best interest of this state, subject to the following assumptions:

(1) The federal government provides an annual program grant in an amount no less than that allocated for the state in the 1984 fiscal year.

(2) The federal government provides technical assistance to this state, as requested, in emergency situations and during outbreaks of waterborne diseases.

(3) The federal government must negotiate an annual work plan for the [*Department of Human Services*] **Oregon Health Authority** that can be accomplished within the amount of program grant funding available.

(4) The [*Department of Human Services*] **authority** adopts standards no less stringent than the National Primary Drinking Water Regulations of the United States Environmental Protection Agency.

(5) The [*Department of Human Services*] **authority** provides engineering assistance through regional offices in at least four geographically distributed areas in this state.

(6) In cooperation with representatives of local health departments, the [*Department of Human Services*] **authority** develops an equitable formula for distribution of available funds to support local health department water programs.

(7) The primacy agreement may be canceled by the [*Department of Human Services*] **authority**, upon 90 days' notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1).

(8) The federal government can impose financial sanctions against this state if the state fails to meet the objectives of the annual negotiated work plan without reasonable explanation by tying the next annual funding to specific state production and by withholding of funds a possibility if continued unexplained failures occur but no sanction exists to interfere with other types of federal funding in this state.

(9) The federal government may seek to enforce the safe drinking water standards if this state fails to take timely compliance action against a public water system that violates such standards.

(10) Enforcement under subsection (9) of this section may be by injunctive relief or, in the case of willful violation, civil penalties authorized by 42 U.S.C. 300g-3 (a) and (b).

SECTION 857. ORS 448.277 is amended to read:

448.277. The [*Department of Human Services*] **Oregon Health Authority** is authorized to enter into an agreement with the federal government to administer the federal Safe Drinking Water Act in this state. The agreement is subject to the legislative assumption stated in ORS 448.273. The agreement shall remain in effect subject to annual renegotiation of the duties to be performed and the remuneration to be received by the [*department*] **authority** except that it may be canceled by the [*department*] **authority**, upon 90 days' notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1).

SECTION 858. ORS 448.278 is amended to read:

448.278. (1) The [*Department of Human Services*] **Oregon Health Authority** shall establish a program for regulating cross connections and the backflow assemblies that are part of a water system.

(2) The [*department*] **authority** may assess an annual fee on community water systems for the purpose of implementing the cross connection and backflow assembly program established pursuant to this section. The fee may not exceed:

- (a) \$30 for a water system that has 15 to 99 service connections;
- (b) \$75 for a water system that has 100 to 999 service connections;
- (c) \$200 for a water system that has 1,000 to 9,999 service connections; or
- (d) \$350 for a water system that has 10,000 or more service connections.

SECTION 859. ORS 448.279 is amended to read:

448.279. (1) The [*Department of Human Services*] **Oregon Health Authority** by rule shall establish a certification program for persons who inspect cross connections or test backflow assemblies. The program shall include minimum qualifications necessary for a person to be certified to:

- (a) Conduct a cross connection inspection; and
- (b) Test a backflow assembly.

(2) Except for an employee of a water supplier as defined in ORS 448.115, a person certified under this section must:

(a) Become licensed as a construction contractor with the Construction Contractors Board as provided under ORS chapter 701; or

(b) Be employed by a landscape contracting business licensed under ORS 671.510 to 671.760.

(3) In conjunction with the certification program established under subsection (1) of this section, the [department] **authority** may establish and collect a fee from an individual requesting certification under the program. A fee imposed under this subsection:

(a) Is not refundable; and

(b) May not exceed the cost of administering the certification program of the [department] **authority** for which purpose the fee is established, as authorized by the Legislative Assembly within the budget of the [department] **authority** and as the budget may be modified by the Emergency Board.

(4) The [department] **authority** may not require a journeyman plumber licensed under ORS chapter 693 or an apprentice plumber, as defined in ORS 693.010, to obtain a certification for testing backflow assemblies under the program established under this section.

(5) All moneys collected by the [department] **Oregon Health Authority** under this section shall be deposited in the General Fund to the credit of an account of the [department] **authority**. Such moneys are continuously appropriated to the [department] **Oregon Health Authority** to pay the cost of administering the certification program established pursuant to this section and the cost of administering water system cross connection and backflow assembly programs.

SECTION 860. ORS 448.280 is amended to read:

448.280. (1) In addition to any other penalty provided by law:

(a) Any person who violates any rule of the [Department of Human Services] **Oregon Health Authority** relating to the construction, operation or maintenance of a water system or part thereof shall incur a civil penalty not to exceed \$500 for each day of violation, except that a violation at any water system that serves more than 10,000 people shall be subject to a civil penalty not to exceed \$1,000 for each day of violation.

(b) Any person who operates an environmental laboratory and who purports that the laboratory is accredited under the environmental laboratory accreditation program established under ORS 438.615 when the laboratory is not accredited shall incur a civil penalty in accordance with the schedule of penalties established by rule by the Director of [Human Services] **the Oregon Health Authority**, in collaboration with the accrediting authority.

(2) No civil penalty prescribed under subsection (1) of this section shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the [department] **authority** or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

SECTION 861. ORS 448.285 is amended to read:

448.285. (1) The Director of [Human Services] **the Oregon Health Authority** shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed \$500 per day, except that a violation at any water system that serves more than 10,000 people shall be subject to a civil penalty not to exceed \$1,000 for each day of violation.

(2) The director may impose the penalty without hearing but only after the notice required by ORS 448.280 (2). In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, 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, orders and permits pertaining to the water system.

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

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the [Department of Human Services] **Oregon Health Authority** considers proper and consistent with the public health and safety.

(4) In adopting rules or imposing penalties under this section for violations of ORS 448.280 (1)(b), the director shall collaborate with the accrediting authority.

SECTION 862. ORS 448.295 is amended to read:

448.295. Subject to the authority of the [*Department of Human Services*] **Oregon Health Authority**, for the purpose of protecting from pollution their domestic water supply sources, cities shall have jurisdiction over all property:

(1) Occupied by the distribution system or by the domestic water supply sources by and from which the city or any person or corporation provides water to the inhabitants of the city.

(2) Acquired, owned or occupied for the purpose of preserving or protecting the purity of the domestic water supply source.

(3) Acquired, owned or occupied by cities within the areas draining into the domestic water supply sources.

SECTION 863. ORS 448.315 is amended to read:

448.315. The mayor or authorities having control of the community water supply system supplying the city may appoint special police officers who:

(1) After taking oath, shall have the powers of constables.

(2) May arrest with or without warrant any person committing, within the territory described in ORS 448.295, for:

(a) Any offense against the purity of the domestic water supply source or the community water supply system under state law or an ordinance of such city; or

(b) Any violation of any rule of the [*Department of Human Services*] **Oregon Health Authority** or the authorities having control of the city water system for the protection of the purity of the domestic water supply source or the community water supply system.

(3) May take any person arrested for any violation under this section before any court having jurisdiction thereof to be proceeded with according to law.

(4) When on duty, shall wear in plain view a badge or shield bearing the words "Special Police" and the name of the city for which appointed.

SECTION 864. ORS 448.330 is amended to read:

448.330. (1) The Director of [*Human Services*] **the Oregon Health Authority** may prohibit the sale of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in this state and the installation or use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in any private or public potable water supply system or individual water user's lines until such time as the director determines that adequate standards exist and are practiced in the manufacture of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings to insure that the pipe and solder do not present a present or potential threat to the public health in this state.

(2) The director [*of Human Services*] shall adopt, by rule, product acceptability criteria for water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for water supply purposes which insure that the pipe and solder do not present a threat to the public health in this state. The [*Department of Human Services*] **Oregon Health Authority** shall be responsible for the monitoring of the sale and use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for compliance with the product acceptability criteria. The Department of Consumer and Business Services shall cooperate with, and assist, the [*Department of Human Services*] **authority** in its monitoring efforts.

(3) No water pipe used to carry potable water or solders, fillers or brazing material used in making up joints and fittings which does not conform to the product acceptability criteria adopted under subsection (2) of this section shall be sold in this state or installed in any part of any public or private potable water supply system or individual water user's lines.

(4) Notwithstanding subsection (1) or (3) of this section, the director [*of Human Services*] may grant exemptions from any prohibition of the sale or use of water pipe used to carry potable water for the emergency repair or replacement of any existing part of a water supply system, or for the

necessary use by a well driller in the installation of a well. The director may require any person using water pipe used to carry potable water under this subsection to notify the [Department of Human Services] **authority** of the date and location of that use.

SECTION 865. ORS 448.407 is amended to read:

448.407. To aid and advise the Environmental Quality Commission and [Department of Human Services] **the Oregon Health Authority** in the adoption of rules under ORS 448.410 and 448.450, the Director of the Department of Environmental Quality and the Director of [Human Services] **the Oregon Health Authority** shall appoint an advisory committee. The members of the committee shall include but need not be limited to representatives of all types of water systems.

SECTION 866. ORS 448.409 is amended to read:

448.409. On or before January 1 of each odd-numbered year, the Department of Environmental Quality and the [Department of Human Services] **Oregon Health Authority** shall develop and submit a joint report to the Legislative Assembly. The report shall include, but need not be limited to:

(1) A summary of actions taken under ORS 448.405 to 448.465, 448.992 and 448.994;

(2) An evaluation of the effectiveness of such actions; and

(3) Any information and recommendations, including legislative recommendations the [Department of Environmental Quality or the Department of Human Services] **department or the authority** considers appropriate.

SECTION 867. ORS 448.410 is amended to read:

448.410. (1) The Environmental Quality Commission shall:

(a) Adopt rules necessary to carry out the provisions of ORS 448.410 to 448.430 and 448.992.

(b) Classify all sewage treatment works. In classifying the sewage treatment works, the commission shall take into consideration size and type, character of wastewater to be treated and other physical conditions affecting the sewage treatment works and the skill, knowledge and experience required of an operator.

(c) Certify persons qualified to supervise the operation of sewage treatment works.

(d) Subject to the prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the costs incurred by the Department of Environmental Quality in carrying out the provisions of ORS 448.410 to 448.430 and 448.992 and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(2) The commission may grant a variance from the requirements of ORS 448.415, according to criteria established by rule by the commission.

(3) In adopting rules under this section, the commission shall consult with the [Department of Human Services] **Oregon Health Authority** in order to coordinate rules adopted under this section with rules adopted by the [Department of Human Services] **authority** under ORS 448.450.

SECTION 868. ORS 448.450 is amended to read:

448.450. (1) The [Department of Human Services] **Oregon Health Authority** shall:

(a) Adopt rules necessary to carry out the provisions of ORS 448.450 to 448.465, 448.992 and 448.994.

(b) Classify all potable water treatment plants and water distribution systems actually used or intended for use by the public. In classifying the potable water treatment plants and water distribution systems, the [department] **authority** shall take into consideration size and type, character of water to be treated and other physical conditions affecting the treatment plants and distribution systems and the skill, knowledge and experience required of an operator.

(c) Certify persons qualified to supervise the operation of a potable water treatment plant or a water distribution system.

(d) Subject to the prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the cost of the [Department of Human Services] **authority** in carrying out the pro-

visions of ORS 448.450 to 448.465, 448.992 and 448.994 and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(2) Notwithstanding the authority of the [*Department of Human Services*] **Oregon Health Authority** to establish fees for certification under subsection (1)(d) of this section, the [*department*] **authority** will not establish fees for certification of operators of water systems serving ground water to fewer than 150 service connections.

(3) In adopting rules under this section, the [*Department of Human Services*] **authority** shall consult with the Department of Environmental Quality in order to coordinate rules adopted under this section with rules adopted by the Environmental Quality Commission under ORS 448.410.

SECTION 869. ORS 448.460 is amended to read:

448.460. On and after September 27, 1987, an operator holding a current Oregon water treatment certification issued under a voluntary certification program shall be considered certified under the program established under ORS 448.450 at the same classification and grade. Certification of operators by any state that, as determined by the [*Department of Human Services*] **Oregon Health Authority**, accepts certifications made under ORS 448.450 to 448.465, 448.992 and 448.994, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of ORS 448.450 to 448.465, 448.992 and 448.994, if in the judgment of the Director of [*Human Services*] **the Oregon Health Authority**, the certification requirements of such state are substantially equivalent to the requirements of ORS 448.450 to 448.465, 448.992 and 448.994 or any rule adopted under ORS 448.450 to 448.465, 448.992 and 448.994.

SECTION 870. ORS 448.465 is amended to read:

448.465. Any fees collected pursuant to the schedule adopted under ORS 448.450 shall be deposited in the General Fund of the State Treasury to the credit of the [*Department of Human Services*] **Oregon Health Authority**. Such fees are continuously appropriated to the Department of Environmental Quality to pay the cost of administering the provisions of ORS 448.450 to 448.465, 448.992 and 448.994.

SECTION 871. ORS 448.990 is amended to read:

448.990. (1) Violation of ORS 448.005 to 448.090 by any person, firm or corporation, whether acting as principal or agent, employer or employee, is punishable, upon conviction, by a fine of not less than \$25 nor more than \$500 or by imprisonment in the county jail not exceeding six months, or by both. Each day that the violation continues is a separate offense.

(2) Subject to ORS 153.022, violation of any of the following is punishable as a Class A misdemeanor:

(a) Any rule of the [*Department of Human Services*] **Oregon Health Authority** adopted pursuant to ORS 448.115 to 448.330.

(b) Any order issued by the [*department*] **authority** pursuant to ORS 448.175.

(c) ORS 448.265 or 448.315 (2)(a).

SECTION 872. ORS 450.165 is amended to read:

450.165. (1) Whenever the board deems it expedient or necessary to cause to be constructed sewers, drains or sewage treatment plants, the cost of which, in whole or in part, is to be paid either by the proceeds of the sale of bonds by the district or assessed against the property directly benefited or by both methods in proportion, the board shall retain a registered professional engineer to prepare plans and specifications for the sewers, drains or sewage treatment plants, which plans and specifications shall be filed in the office of the secretary of the district.

(2) The district board may, however, adopt any plans and specifications they see fit, provided the plans have been prepared by a registered professional engineer and have been approved by the [*Department of Human Services*] **Oregon Health Authority** and the Environmental Quality Commission.

SECTION 873. ORS 450.845 is amended to read:

450.845. Whenever the board deems it expedient or necessary for the protection of the public health, safety and welfare to cause to be constructed treatment plants or trunk or lateral sewers or drains, or any combination thereof, the board shall determine the proposed boundaries of the area

to be directly benefited thereby and have a registered professional engineer prepare plans and specifications for such plants, sewers or drains. Such plans and specifications must be approved by the [*Department of Human Services*] **Oregon Health Authority** and the Environmental Quality Commission and shall be filed in the office of the **sanitary** authority. Parcels of land which may be served practicably by lateral sewers or drains connected with treatment plants or trunk sewers or drains and are not adequately served by existing plants, sewers or drains, as the case may be, are considered to be directly benefited by the plants, sewers or drains of the **sanitary** authority. If all or any portion of the cost of construction is to be specially assessed against individual property, the engineer shall include in the plans and specifications, a description of the location and assessed value of each lot, tract or parcel of land, or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof and an estimate of the unit cost of the improvement to the specially benefited property.

SECTION 874. ORS 451.445 is amended to read:

451.445. (1) When certified copy of the findings of the Director of [*Human Services*] **the Oregon Health Authority** is filed with the county court as provided by ORS 431.740 or 431.750, the county court shall, subject to ORS 198.792, proceed to form the district to provide the facilities described in the findings and shall enter an order in accordance with ORS 451.485.

(2) The county court shall, within one year after making its order under ORS 451.485, prepare plans and specifications for the service facilities proposed to be provided within the district and proceed in accordance with the time schedule to construct or install the facilities.

(3) Notwithstanding the provisions of ORS 451.487, the order of the county court under ORS 451.485 is not subject to referendum if it is adopted in accordance with subsection (1) of this section and as a result of proceedings conducted under ORS 431.705 to 431.760.

(4) Notwithstanding ORS 451.495, when service facilities are to be constructed for the purpose of removing or alleviating a danger to public health and as a result of proceedings conducted by ORS 431.705 to 431.760, if any portion of the cost of the service facilities is to be assessed against the property directly benefited, ORS 451.495 (1)(c) does not apply to the general ordinance providing for the method of assessment which must be adopted under ORS 451.495.

SECTION 875. ORS 452.151 is amended to read:

452.151. The board may request technical advice and information from the Oregon State University Agricultural Experiment Station and the [*Department of Human Services*] **Oregon Health Authority** regarding methods and chemicals to be used in the control and extermination of rats and public health vectors.

SECTION 876. ORS 452.300 is amended to read:

452.300. (1) The [*Department of Human Services*] **Oregon Health Authority** shall maintain a program of public health vector control, which program shall include, but not be limited to:

(a) Monitoring and investigating public health vectors, vector habitats and vector-borne diseases.

(b) Providing technical assistance and information to vector control districts, local vector control programs and the public.

(c) Maintaining training programs for vector control district personnel and other public health personnel.

(d) Coordinating and assisting vector control district programs and other local programs in research projects.

(e) Reviewing vector control program pesticide use plans submitted by agencies that intend to use pesticides for vector control. Agencies must obtain [*department*] **authority** approval of their annual pesticide use plan prior to pesticide applications.

(2) The [*department*] **authority** may provide an amount not to exceed \$5,000 per year in matching funds to a district for a program to allow the district to carry out disease surveillance in cooperation with public health personnel.

SECTION 877. ORS 452.530 is amended to read:

452.530. (1) Notwithstanding any other provisions of law the [*department*] **State Department of Agriculture** shall administer and enforce the provisions of ORS 452.510 to 452.590.

(2) The department may make all rules and regulations for the administration of ORS 452.510 to 452.590, and provide the necessary forms to carry those sections into effect. This includes the authority necessary to promulgate regulations affecting persons and property before, during or after the department has detected, controlled or destroyed ragweed and to prevent the spreading or re-growth of the weed.

(3) The department may cooperate with federal agencies, the Oregon State University, extension service, the [*Department of Human Services*] **Oregon Health Authority** and all other public and private agencies or organizations in the administration of ORS 452.510 to 452.590. The department shall publish and furnish information and advice concerning the control of ragweed, the injurious consequences of ragweed pollen and the necessity of preventing the further spread of this obnoxious weed.

SECTION 878. ORS 453.001 is amended to read:

453.001. As used in ORS 453.001 to 453.185 and 453.605 to 453.807, unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[*(1) “Department” means the Department of Human Services.*]

(2) **“Director” means the Director of [*Human Services*] the Oregon Health Authority.**

SECTION 879. ORS 453.005 is amended to read:

453.005. As used in ORS 453.005 to 453.135 unless the context requires otherwise:

(1) **“Combustible” means any substance that has a flash point above 80 degrees Fahrenheit to and including 140 degrees, as determined by the Tagliabue Open Cup Tester.**

(2) **“Commerce” means any and all commerce within the State of Oregon and subject to the jurisdiction thereof and includes the operation of any business or service establishment.**

(3) **“Corrosive” means any substance that in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.**

(4) **“Electrical hazard” means an article that because of its design or manufacture may cause personal injury or illness by electric shock when in normal use or when subjected to reasonably foreseeable damage or abuse.**

(5) **“Extremely flammable” means any substance that has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester.**

(6) **“Flammable” means any substance that has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.**

(7) **“Hazardous substance” means:**

(a) Any substance that is toxic, corrosive, an irritant, a strong sensitizer, flammable, combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, or any substance that the Director of [*Human Services*] **the Oregon Health Authority** finds, pursuant to the provisions of ORS 453.005 to 453.135, comes within the definition of this paragraph.

(b) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines that the substance is sufficiently hazardous to require labeling in accordance with ORS 453.005 to 453.135 in order to protect the public health. However, “hazardous substance” does not include any source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(c) Any toy or other article intended for use by children that the director determines in accordance with ORS 453.055 presents an electrical, thermal or mechanical hazard.

(d) Any article that is not pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act or regulated under ORS 616.335 to 616.385, but that is a hazardous substance within the meaning of paragraph (a) of this subsection by reason of bearing or containing pesticide.

(e) The following brominated flame retardant chemicals:

(A) Pentabrominated diphenyl ether; and

(B) Octabrominated diphenyl ether.

(8) "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered;

(b) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by humans when the substance is used in any reasonably foreseeable manner; or

(c) Produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.

(9) "Immediate container" does not include package liners.

(10) "Irritant" means any substance not corrosive within the meaning of subsection (3) of this section, but that on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article that is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly on the article involved or on a tag or other suitable material affixed thereto, and a requirement made by or under authority of ORS 453.005 to 453.135 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written or otherwise.

(12) "Mechanical hazard" means an article that in normal use or when subjected to reasonably foreseeable damage or abuse presents an unreasonable risk of personal injury or illness, by its design or manufacture:

(a) From fracture, fragmentation, or disassembly of the article;

(b) From propulsion of the article or any part or accessory thereof;

(c) From points or other protrusions, surfaces, edges, openings, or closures;

(d) From moving parts;

(e) From lack or insufficiency of controls to reduce or stop motion;

(f) As a result of self-adhering characteristics of the article;

(g) Because the article or any part or accessory thereof may be aspirated or ingested;

(h) Because of instability; or

(i) Because of any other aspect of the article's design or manufacture.

(13) "Misbranded hazardous substance" means a hazardous substance that does not meet the labeling requirements of ORS 453.035.

(14) "Poison" means:

(a) Arsenic and its preparations;

(b) Corrosive sublimate;

(c) Cyanides and preparations, including hydrocyanic acid;

(d) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of 10 percent or more;

(e) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more;

(f) Strychnine;

(g) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H₂SO₄) in a concentration of 10 percent or more;

(h) Solution of ammonia, U.S.P. 28 percent; or

(i) Carboic acid.

(15) "Radioactive substance" means a substance that emits ionizing radiation.

(16) "Strong sensitizer" means a substance that will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the same substances and that is designated as such by the director [*of Human Services*].

(17) "Thermal hazard" means an article that, in normal use or when subjected to reasonably foreseeable damage or abuse, because of its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(18) "Toxic substance" means any substance, other than radioactive substance, that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface.

SECTION 880. ORS 453.035 is amended to read:

453.035. (1) The Director of [*Human Services*] **the Oregon Health Authority** shall adopt standards for the labeling of hazardous substances. The director may permit or require the use of a recognized generic name or may require the common or usual name or the chemical name, if there is no common or usual name, of the hazardous substance or of each component which the director finds contributes substantially to its hazard.

(2) The director shall require:

(a) The word "Danger" on substances which are extremely flammable, corrosive or highly toxic;

(b) The word "Warning" or "Caution" on other hazardous substances;

(c) An affirmative statement of the principal hazard or hazards, such as "Flammable," "Combustible," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording descriptive of the hazard;

(d) Precautionary measures describing the action to be followed or avoided, except when modified by rule of the director pursuant to subsection (4) of this section;

(e) Instruction, when necessary or appropriate, for first-aid treatment;

(f) The word "Poison" for any hazardous substance which is defined as "highly toxic" in ORS 453.005;

(g) Instructions for handling and storage of packages which require special care in handling or storage;

(h) Adequate directions for the protection of children from the hazard if the article is intended for use by children and is not a banned hazardous substance, or the statement "Keep out of the reach of children," or its practical equivalent, if the article is not intended for use by children; and

(i) The name and place of business of the manufacturer, packer, distributor or seller.

(3) Any statement required by this section must be in the English language, located prominently and in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label.

(4) If the director finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under ORS 453.005 to 453.135 and 453.990 (2) is impracticable or is not necessary for the adequate protection of the public health and safety, the director may authorize the exemption of such substance from the requirements, to an extent consistent with adequate protection of the public health and safety.

SECTION 881. ORS 453.055 is amended to read:

453.055. (1) The Director of [*Human Services*] **the Oregon Health Authority** shall declare to be a hazardous substance any substance or mixture of substances which the director finds to be within the definition of hazardous substance in ORS 453.005.

(2) If the director finds that any hazardous substance is a misbranded hazardous substance, the director shall require such reasonable variations or labeling requirements in addition to those required by ORS 453.035 as the director finds necessary for the protection of the public health and safety. However, if the director finds that any hazardous substance cannot be labeled adequately to protect the public health and safety, or the article presents an imminent danger to the public health and safety, the director may declare the article to be a banned hazardous substance and require its removal from commerce.

(3) If the director finds that a toy or other article intended for use by children is a hazardous substance, bears or contains a hazardous substance in a manner as to be susceptible of access by a child to whom the toy or other article is entrusted or presents an electrical, mechanical or thermal hazard, the director shall declare a toy or other article to be a banned hazardous substance and require its removal from commerce.

(4) If the director finds that any hazardous substance intended, or packaged in a form suitable, for use in a household, notwithstanding cautionary labeling as required under ORS 453.005 to 453.135 and 453.990 (2), involves a degree or nature of the hazard by its presence or use in households that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce, the director shall declare the hazardous substance to be a banned hazardous substance and require its removal from commerce.

(5) Any hazardous substance intended, or packaged in a form suitable for use in the household or by children, which fails to bear a label in accordance with ORS 453.035 and the standards of the director shall be deemed to be a misbranded hazardous substance.

(6) Any hazardous substance contained in a reused food, drug or cosmetic container is a misbranded hazardous substance.

SECTION 882. ORS 453.065 is amended to read:

453.065. (1) Whenever the Director of [*Human Services*] **the Oregon Health Authority** or a designated representative finds or has probable cause to believe that any hazardous household substance is misbranded, or is a banned hazardous substance, the director or designated representative shall affix to such article a tag or other appropriate marking, giving notice that such article is or is suspected of being misbranded or is a banned hazardous substance, and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court.

(2) When an article detained or embargoed under subsection (1) of this section has been found to be misbranded or a banned hazardous substance, the director shall petition the circuit court of the county within which the article is detained or embargoed for a label of condemnation of such article. However, if the director or a designated representative finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, the director or designated representative shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, after entry of the judgment, the article shall be destroyed at the expense of the owner or claimant thereof, under supervision of the director or a designated representative, and all court costs and fees, and storage and other proper expenses, shall be taxed against the owner or claimant of such article or the owner or claimant agent. However, when the misbranding can be corrected by proper labeling of the article, after entry of the judgment and after such costs, fees, and expenses have been paid and a good and sufficient bond or irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, conditioned that such article shall be so labeled, has been executed, the court may order that such article be delivered to the owner or claimant thereof for such labeling under the supervision of an agent of the director. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the

court by the director that the article is no longer in violation of ORS 453.005 to 453.135 and 453.990 (2), and that the expenses of such supervision have been paid.

SECTION 883. ORS 453.075 is amended to read:

453.075. (1) Any article or substance sold by its manufacturer, distributor, or dealer that is a banned hazardous substance, whether or not it was such at the time of its sale, shall, in accordance with rules of the Director of [*Human Services*] **the Oregon Health Authority**, be repurchased as provided in this section.

(2) The manufacturer or distributor of any such article shall repurchase it from the person to whom the manufacturer or distributor sold it, and shall:

(a) Refund to that person the purchase price paid for such article or substance;

(b) If that person has repurchased such article or substance pursuant to this paragraph or paragraph (a) of this subsection, reimburse the person for any amounts paid in accordance with this section for the return of such article or substance in connection with its repurchase; and

(c) If the manufacturer requires the return of such article or substance in connection with the repurchase of it, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(3) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to the dealer, the dealer shall refund to the purchaser the purchase price paid for it and reimburse the person for any reasonable and necessary transportation charges incurred in its return.

(4) As used in this section:

(a) "Distributor" includes a dealer who sells at wholesale an article or substance with respect to that sale.

(b) "Manufacturer" includes an importer for resale.

SECTION 884. ORS 453.085 is amended to read:

453.085. A person may not perform any of the following acts:

(1) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance.

(2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of a hazardous substance.

(3) The performance of any act with respect to a hazardous substance while the substance is in commerce, or while the substance is held for sale or resale after shipment in commerce, that results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(4) The receipt of or delivery into commerce of any misbranded hazardous substance or banned hazardous substance for pay or otherwise.

(5) The giving of a guarantee or undertaking that is false, except as a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, a person residing in the United States from whom the person received in good faith the hazardous substance.

(6) The failure to permit entry or inspection as authorized by ORS 453.005 to 453.135 or to permit access to and copying of any record as authorized by ORS 453.005 to 453.135.

(7) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug or cosmetic container or in a container that, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification.

(8) The use by any person to the advantage of the person, or the revealing other than to the Director of [*Human Services*] **the Oregon Health Authority** or the authorized representative of the director or to a court of any information acquired under authority of ORS 453.005 to 453.135 concerning any method or process that is a trade secret entitled to protection.

(9) The sale or delivery of any poison to a minor under 18 years of age without the written order of a person 21 years of age or over, which written order shall be retained in the records of the seller

and the poison register of the seller shall show by the name of the purchaser the fact that the sale or delivery was to a minor on order of an adult and show the adult's name and address.

(10) The sale or delivery of completely denatured alcohol, methyl alcohol (methanol), canned heat or other solidified forms of denatured alcohol, or any preparation containing those substances, to be used for beverage purposes.

(11) The sale or delivery of any poison without making or causing to be made an entry in a poison register of the seller in the manner required by law.

(12) The sale or delivery to any person of any poison without having learned by due inquiry that such person is aware of the poisonous character thereof and that it is desired for a lawful purpose.

(13) The giving of a fictitious name or making any false representations to the seller or dealer when buying any of the poisons.

(14) The sale or delivery to any person by anyone other than a pharmacist of a poison.

(15) The removal or disposal of any detained or embargoed article without permission of the director [*of Human Services*] or a designated representative.

(16) The introduction or delivery for introduction into commerce of any product containing more than one-tenth of one percent by mass of pentabrominated diphenyl ether or octabrominated diphenyl ether. This subsection does not apply to:

(a) Used products; or

(b) Replacement parts for products introduced into commerce before January 1, 2006.

SECTION 885. ORS 453.095 is amended to read:

453.095. (1) The authority to adopt rules for the administration and enforcement of ORS 453.005 to 453.135 and 453.990 (2) is vested in the Director of [*Human Services*] **the Oregon Health Authority** pursuant to ORS chapter 183.

(2) The director shall cause the rules adopted under ORS 453.005 to 453.135 and 453.990 (2) to be no less strict than rules established pursuant to the Federal Hazardous Substances Act.

(3) The combustibility, and extreme flammability of solids and of the contents of self-pressurized containers shall be determined by methods found by the director to be generally applicable to such materials or containers, respectively, and established by the director.

(4) Before designating any substance as a strong sensitizer, the director, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

SECTION 886. ORS 453.105 is amended to read:

453.105. (1) For the purposes of enforcement of ORS 453.005 to 453.135 and 453.990 (2), the Director of [*Human Services*] **the Oregon Health Authority** or a designated representative upon presenting appropriate credentials to the owner, operator or agent in charge, may:

(a) Enter, at reasonable times, any factory, warehouse or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in commerce.

(b) Inspect, at reasonable times, and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein.

(c) Obtain samples of such materials or packages thereof, or of such labeling.

(2) If the director or a designated representative obtains any sample, prior to leaving the premises, the director or designated representative shall pay or offer to pay the owner, operator, or agent in charge for such sample and give a receipt describing the sample obtained.

SECTION 887. ORS 453.115 is amended to read:

453.115. (1) For the purpose of enforcing the provisions of ORS 453.005 to 453.135 and 453.990 (2), carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon request, permit the Director of [*Human Services*] **the Oregon Health Authority** or a designated representative at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous sub-

stances, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof. Such request must be accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates.

(2) Evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained.

(3) Carriers shall not be subject to the other provisions of ORS 453.005 to 453.135 and 453.990 (2) by reason of their receipt, carriage, holding or delivery of hazardous substances in the usual course of business as carriers.

SECTION 888. ORS 453.125 is amended to read:

453.125. In addition to the remedies provided in ORS 453.005 to 453.135 and 453.990 (2), the Director of [*Human Services*] **the Oregon Health Authority** may apply to the circuit court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of ORS 453.085.

SECTION 889. ORS 453.135 is amended to read:

453.135. Before any violation of ORS 453.005 to 453.135 and 453.990 (2) is reported to any district attorney or police official for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present the person's views before the Director of [*Human Services*] **the Oregon Health Authority** or the designated agent of the director, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

SECTION 890. ORS 453.205 is amended to read:

453.205. As used in ORS 453.205 to 453.275:

(1) "Art or craft material" means any raw or processed material or manufactured product marketed or being represented by the manufacturer, repackager or principal importer as being suitable for use in any phase of the creation of any work of visual or graphic art of any medium. "Art or craft material" does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stats. 163) or drugs, devices or cosmetics, which are subject to the Federal Food, Drug and Cosmetics Act (52 Stats. 1040).

(2) "**Authority**" means **the Oregon Health Authority**.

[(2) "*Department*" means *the Department of Human Services*.]

(3) "Human carcinogen" means any substance listed as a human carcinogen by the International Agency for Research on Cancer.

(4) "Medium" includes, but is not limited to, paintings, drawings, prints, sculpture, ceramics, enamels, jewelry, stained glass, plastic sculpture, photographs and leather and textile goods.

(5) "Potential human carcinogen" means one of the following:

(a) Any substance which does not meet the definition of human carcinogen, but for which there exists sufficient evidence of carcinogenicity in animals, as determined by the International Agency for Research on Cancer.

(b) Any chemical shown to be changed by the human body into a human carcinogen.

(6) "Toxic substance causing chronic illness" means any of the following:

(a) Human carcinogens.

(b) Potential human carcinogens.

(c) Any substance included in the list of hazardous substances prepared by the Department of Consumer and Business Services pursuant to the Hazard Communication Rule, Division 155, notwithstanding exemptions made for substances on the list which are used in particular forms, circumstances or concentrations, if the health hazard presented by the substance is not the subject of label statements required by federal law.

SECTION 891. ORS 453.225 is amended to read:

453.225. For the purposes of ORS 453.205 to 453.275, an art or craft material shall be presumed to contain an ingredient which is a toxic substance causing chronic illness if the ingredient, whether an intentional ingredient or an impurity, is one percent or more by weight of the mixture or product, or if the [*Department of Human Services*] **Oregon Health Authority** determines that the toxic or

carcinogenic properties of the art or craft material are such that labeling is necessary for the adequate protection of the public health and safety.

SECTION 892. ORS 453.235 is amended to read:

453.235. (1) No person shall distribute any art or craft material containing toxic substances causing chronic illness on which the person:

(a) Has failed to affix a conspicuous label containing the signal word "WARNING," to alert users of potential adverse health effects.

(b) Has failed to affix a conspicuous label warning of the health-related dangers of the art or craft material. If a product contains:

(A) A human carcinogen, the warning shall contain the statement: "CANCER HAZARD! Overexposure may create cancer risk."

(B) A potential human carcinogen and does not contain a human carcinogen, the warning shall contain the statement: "POSSIBLE CANCER HAZARD! Overexposure might create cancer risk."

(C) A toxic substance causing chronic illness, the warning shall contain, but not be limited to, the following statement or statements where applicable:

(i) "May cause sterility or damage to reproductive organs."

(ii) "May cause birth defects or harm to developing fetus."

(iii) "May be excreted in human milk causing harm to nursing infant."

(iv) "May cause central nervous system depression or injury."

(v) "May cause numbness or weakness in the extremities."

(vi) "Overexposure may cause damage to (specify organ)."

(vii) "Heating above (specify degrees) may cause hazardous decomposition products."

(D) More than one chronically toxic substance, or if a single substance can cause more than one chronic health effect, the required statements may be combined into one warning statement.

(c) Has failed to affix on the label a list of ingredients that are toxic substances causing chronic illness.

(d) Has failed to affix on the label a statement or statements of safe use and storage instructions, conforming to the following list. The label shall contain, but not be limited to, as many of the following risk statements as are applicable:

(A) "Keep out of reach of children."

(B) "When using, do not eat, drink or smoke."

(C) "Wash hands after use and before eating, drinking or smoking."

(D) "Keep container tightly closed."

(E) "Store in well-ventilated area."

(F) "Avoid contact with skin."

(G) "Wear protective clothing (specify type)."

(H) "Wear National Institute of Occupational Safety and Health (NIOSH) certified masks for dusts, mists or fumes."

(I) "Wear NIOSH certified respirator with appropriate cartridge for (specify type)."

(J) "Wear NIOSH certified supplied air respirator."

(K) "Use window exhaust fan to remove vapors and ensure adequate ventilation (specify explosion proof if necessary)."

(L) "Use local exhaust hood (specify type)."

(M) "Do not heat above (specify degrees) without adequate ventilation."

(N) "Do not use or mix with (specify material)."

(e) Has failed to affix on the label a statement on where to obtain more information, such as "call your local poison control center for more health information."

(f) Has failed to affix on the label the name and address of the manufacturer.

(2)(a) If the information listed in subsection (1)(d) of this section cannot fit on the package label, a package insert shall be required to convey all the necessary information to the consumer. In this event, the label shall contain a statement to refer to the package insert, such as "CAUTION: See

package insert before use.” The language on this insert shall be nontechnical and nonpromotional in tone and content.

(b) For purposes of this subsection, “package insert” means a display of written, printed or graphic matter upon a leaflet or suitable material accompanying the art supply.

(3) The requirements set forth in this section shall not be considered to be complied with unless the required words, statements or other information appear on the outside container or wrapper, or on a package insert that is easily legible through the outside container or wrapper and is painted in a color in contrast with the product or the package containing the product.

(4) The [*Department of Human Services*] **Oregon Health Authority** may exempt a material from full compliance with ORS 453.205 to 453.275. In considering this exemption, the [*department*] **authority** shall take into consideration the potential for reasonably foreseeable misuse of a material by a child.

(5) If an art or craft material complies with labeling standards D-4236 of the American Society for Testing and Materials (ASTM), the material complies with the provisions of ORS 453.205 to 453.275, unless the [*department*] **authority** determines that the label on an art or craft material does not satisfy the purposes of ORS 453.205 to 453.275.

SECTION 893. ORS 453.245 is amended to read:

453.245. (1) Art or craft material that is considered by the [*Department of Human Services*] **Oregon Health Authority** to contain a toxic substance causing chronic illness may not be ordered or purchased by a school or school district for use by students in kindergarten and grades 1 through 6.

(2) Any substance that is a toxic substance causing chronic illness may not be ordered or purchased by a school or school district for use by students in grades 7 through 12 unless the substance meets the labeling standards specified in ORS 453.235.

(3) If the [*department*] **authority** finds that, because the chronically toxic, carcinogenic or radioactive substances contained in an art or craft material cannot be ingested, inhaled or otherwise absorbed into the body during any reasonably foreseeable use of the material in a way that could pose a potential health risk, the [*department*] **authority** may exempt the material from these requirements to the extent the [*department*] **authority** determines to be consistent with adequate protection of the public health and safety.

SECTION 894. ORS 453.255 is amended to read:

453.255. (1) By June 1, 1986, the [*Department of Human Services*] **Oregon Health Authority** shall develop a list of those art or craft materials which can be purchased or ordered for use in kindergarten and in grades 1 through 6 and a list of materials which, while not currently sold or manufactured, may be reasonably suspected to still exist at some schools. In developing the lists, the [*department*] **authority** shall consult with manufacturers of art supplies, artists’ groups, health organizations and toxicologists as the [*department*] **authority** considers appropriate.

(2) The Superintendent of Public Instruction shall distribute the lists to all school districts and shall make the lists available to preschools, child care centers and other businesses and organizations which involve children in the use of art or craft materials.

(3) The superintendent shall inform school districts of the requirements of ORS 453.205 to 453.275 and shall encourage school districts to dispose of art or craft materials which may contain human carcinogens, potential human carcinogens or toxic substances causing chronic illness, but which are not affected by ORS 453.205 to 453.275.

SECTION 895. ORS 453.265 is amended to read:

453.265. (1) The manufacturer of any art or craft material sold, distributed, offered for sale or exposed for sale in this state shall supply to a national poison control network approved by the Director of [*Human Services*] **the Oregon Health Authority** the formulation information required by that network for dissemination to poison control centers. Failure to file formulation information with an approved poison control network is a violation of ORS 453.205 to 453.275.

(2) The requirements set forth in ORS 453.235 shall not be considered to be complied with unless all required words, statements or other information accompany art or craft materials from manufacturer to consumer, not excluding any distributor, packager or repackager.

SECTION 896. ORS 453.342 is amended to read:

453.342. Any fire department, emergency service personnel or law enforcement agency responding to an incident of injury to a human, wildlife, domestic animal or property resulting from a hazardous substance emergency shall make a report of the incident, in writing, to the office of the State Fire Marshal. The State Fire Marshal annually shall summarize all incidents reported to the State Fire Marshal and the information received as a result of the survey conducted under ORS 453.317. The State Fire Marshal shall submit a copy of the summary to:

- (1) The Governor;
- (2) The Legislative Assembly;
- (3) The Department of Environmental Quality;
- (4) The Department of Consumer and Business Services;
- (5) The Department of Transportation;
- [(6) *The Department of Human Services;*]
- [(7)] (6) The Environmental Health Sciences Center at Oregon State University;
- [(8)] (7) The Office of Emergency Management; *[and]*
- (8) The Oregon Health Authority; and**
- (9) Every public library as defined in ORS 357.400.

SECTION 897. ORS 453.347 is amended to read:

453.347. (1) The State Fire Marshal shall assist with emergency response planning by appropriate agencies of government at the local, state and national levels to assure that the response to a hazardous substance fixed site or transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This planning shall include assisting in and training for the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The State Fire Marshal may apply for funds as available to train, equip and maintain an appropriate response capability at the state and local level.

(3) The State Fire Marshal shall issue certificates to local agency personnel who have completed the training.

(4) To the extent practicable, the emergency preparedness and response program for hazardous substances as provided in this section shall be consistent with the program for radioactive material, wastes and substances developed by the State Department of Energy and *[Department of Human Services]* **the Oregon Health Authority** under ORS chapters 453 and 469.

SECTION 898. ORS 453.370 is amended to read:

453.370. (1) In order to maintain and ensure the effectiveness of state programs established under ORS 453.307 to 453.414, as well as to ensure the effectiveness of local efforts, a local government may establish, enforce or enact a local community right to know regulatory program provided that the local program complies with the requirements of this section.

(2) To the extent that a local program is supported in whole or in part by fees, those fees may be set, imposed or assessed only by the local government that is implementing the local program. Such fees are allowed only to the extent not otherwise prohibited or limited by law. Such fees:

- (a) Shall be adopted by ordinance as a fee schedule, after notice and public hearing; and
- (b) May not exceed \$2,000 for any single facility in any calendar year.

(3)(a) All local community right to know regulatory program enforcement, including but not limited to penalties, may be imposed only by a local fire official or a board established by the local government to implement the local community right to know regulatory program.

(b) Penalties for violations of a community right to know regulatory program may not exceed \$1,000 per day and shall be assessed according to a schedule adopted by the local government after notice and public hearing. Except when a local government has reasonable grounds to find that an employer willfully and knowingly avoided compliance with the local program, and as long as the employer submits the required information within 30 days following a written notification of non-

compliance, penalties shall be suspended if the employer has no history of violating the local program.

(4) After notice and public hearing, the local government must determine that:

(a) Existing reporting to local, state or federal agencies is inadequate to meet the needs and concerns of the local government;

(b) The state or federal government does not collect data that will provide substantially the same information desired by the local government;

(c) The local government has asked the appropriate state agency to operate the program desired by the local government and the state agency has not committed to do so within 180 days;

(d) The Department of Environmental Quality, the State Fire Marshal and the [*Department of Human Services*] **Oregon Health Authority** have had an opportunity to comment on the proposed program and the local government has responded to those comments; and

(e) The local government has provided an opportunity for written and oral public comment on the proposed program.

(5) Any local government that operates a local community right to know regulatory program shall:

(a) Provide for an opportunity to report data electronically;

(b) Place data reported under the program on the Internet with instructions for the general public that explain the organization of the data; and

(c) Keep records of data usage and otherwise document interest in the collected data.

(6) Data and other information presented under a local community right to know regulatory program:

(a) Shall clearly distinguish, where appropriate, public health interpretations from the raw data;

(b) May, where feasible, indicate specifically which hazardous substances and toxic substances are being released into the local air, water and land; and

(c) Shall include locations where a person may obtain epidemiological statistics related to health effects of the hazardous substances and toxic substances, if available.

(7) For any hazardous substance or toxic substance that a local government proposes to require an employer to report under a local community right to know regulatory program established pursuant to this section, the local government shall seek written and oral public comment and provide written notice to interested parties prior to adoption as a reporting requirement. The local government must provide the public with an opportunity to comment on the appropriateness of reporting on the proposed hazardous substance or toxic substance, including but not limited to commenting on health and environmental considerations, economic concerns and feasibility of compliance. The local government shall consider the comments before adopting a list or making additions to a list of hazardous substances and toxic substances to be reported.

(8) In administering a local community right to know regulatory program, a local government shall establish procedures to exempt, when reasonable, an entity from all or part of the local program for the purpose of protecting trade secrets or where the local government determines that the operations of the entity pose little or no risk to the public health or the environment.

(9) Except as prohibited by federal or state law, a local program may not differentiate between public and private employers.

(10) Nothing in this section shall be construed to limit the authority of a local government to:

(a) Distribute information collected under the state Community Right to Know and Protection Act; or

(b) Adopt or enforce a local ordinance, rule or regulation strictly necessary to comply with:

(A) The Uniform Building Code as adopted and amended by the Director of the Department of Consumer and Business Services;

(B) A uniform fire code; or

(C) Any requirement of a state or federal statute, rule or regulation, including but not limited to those controlling hazardous substances, toxic substances or other environmental contaminants.

SECTION 899. ORS 453.605 is amended to read:

453.605. **As used** in ORS 453.605 to 453.800, unless the context requires otherwise:

(1) **“Authority” means the Oregon Health Authority.**

[(1)] (2) **“By-product material”** means radioactive material, other than special nuclear material, that is yielded or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

[(2) *“Department” means the Department of Human Services.*]

(3) **“Director”** means the Director of *[Human Services]* **the Oregon Health Authority.**

(4) **“Electronic product”** means any manufactured product or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation, such as, but not limited to microwave ovens, laser systems or diathermy machines.

(5) **“Federal government”** means the United States or any agency or instrumentality of the United States.

(6) **“General license”** means a license, effective under rules of the *[department]* **authority** without the filing of an application, to acquire, own, possess, use or transfer a device or equipment that produces radiation, or a quantity of, or a device or equipment that utilizes, by-product material, source material, special nuclear material or other radioactive material that occurs naturally or is produced artificially.

(7) **“Person”** means any of the following other than the United States Atomic Energy Commission or any successor thereto:

(a) Individual, group, association, firm, partnership, corporation, trust, estate, agency or public or private institution;

(b) Political subdivision or agency of this state;

(c) State other than this state or any political subdivision or agency of a state other than this state; or

(d) The legal successor, representative, agent or agency of a person listed in paragraphs (a) to (c) of this subsection.

(8) **“Radiation”** means:

(a) Ionizing radiation including gamma rays, X-rays, alpha and beta particles, protons, neutrons and other atomic or nuclear particles or rays.

(b) Any electromagnetic radiation that can be generated during the operations of electronic products and that the *[department]* **authority** has determined to present a biological hazard to the occupational or public health and safety but does not mean electromagnetic radiation that can be generated during the operation of an electronic product that is licensed by the Federal Communications Commission.

(c) Any sonic, ultrasonic or infrasonic waves that are emitted from an electronic product as a result of the operation of an electronic circuit in such product and that the *[department]* **authority** has determined to present a biological hazard to the occupational or public health and safety.

(9) **“Source material”** means:

(a) Uranium, thorium or any other material that the *[department]* **authority** declares to be essential to the production of special nuclear material by an order made after the United States Atomic Energy Commission or any successor thereto has determined the material to be source material; or

(b) Ore that contains such a concentration of one or more materials mentioned in paragraph (a) of this subsection that the *[department]* **authority** declares the ore to be essential to the production of special nuclear material by an order made after the United States Atomic Energy Commission or any successor thereto has determined such ore to be source material.

(10) **“Special nuclear material”** means any of the following that is not source material:

(a) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, or any other material that the *[department]* **authority** declares to be capable of releasing substantial quantities of atomic energy by an order made after the United States Atomic Energy Commission or any successor thereto has determined the material to be special nuclear material.

(b) Material artificially enriched by any material mentioned in paragraph (a) of this subsection.

(11) "Specific license" means a license, issued after application, to receive, acquire, own, possess, use, manufacture, produce or transfer a device or equipment that produces radiation, or a quantity of, or a device or equipment that utilizes, by-product material, source material or special nuclear material or other radioactive material that occurs naturally or is produced artificially.

(12) "X-ray machine" means a device or equipment that produces radiation when in operation but does not utilize by-product material, source material, special nuclear material or other radioactive material that occurs naturally or is produced artificially.

(13) "X-ray machine registration" means an authorization granted by the [department] **authority** allowing the operation of an X-ray machine.

SECTION 900. ORS 453.635 is amended to read:

453.635. (1) The [Department of Human Services] **Oregon Health Authority** is the State Radiation Control Agency, but ORS 453.605 to 453.800 do not apply to a radiation source while it is being transported on a railroad car or in a motor vehicle subject to and in conformity with rules adopted by the Department of Transportation nor do they apply to any matter other than transportation of radiation sources within the authority of the Energy Facility Siting Council under ORS chapter 469. To protect occupational and public health and safety against radiation hazards the [Department of Human Services] **authority** shall:

(a) Develop programs to evaluate hazards associated with the use of radiation sources; and

(b) With due regard for compatibility with the regulatory programs of the federal government, promulgate standards and make reasonable regulations relating to registration, licensing, use, handling, transport, storage, disposal, other than disposal regulated by ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930, and control of radiation sources, including but not limited to by-product materials, source materials and special nuclear materials.

(2) To protect occupational and public health and safety against radiation hazards the [department] **authority** or its authorized representative may:

(a) Advise, consult and cooperate with other agencies of this state, the federal government, other states, interstate agencies, political subdivisions of this state or other states and with groups concerned with control of radiation sources;

(b) Encourage, participate in or conduct studies, investigations, training, research or demonstrations relating to control of radiation sources;

(c) Accept and administer loans, grants or other funds or gifts, conditional or otherwise, from the federal government or from any other source, public or private;

(d) Collect and disseminate information relating to control of radiation sources; and

(e) Subject to any applicable provision of the State Personnel Relations Law, appoint officers and employees and prescribe their duties and fix their compensation.

SECTION 901. ORS 453.645 is amended to read:

453.645. The Director of [Human Services] **the Oregon Health Authority** shall appoint a Radiation Advisory Committee to advise the [Department of Human Services] **Oregon Health Authority** on matters relating to radiological health and radiation protection. The committee shall consist of eight persons who because of their training and experience are qualified to advise the [department] **authority** on such matters and they shall serve at the pleasure of the director. The members of the Radiation Advisory Committee are entitled to compensation and expenses as provided in ORS 292.495.

SECTION 902. ORS 453.665 is amended to read:

453.665. (1) Subject to subsection (2) of this section, the [Department of Human Services] **Oregon Health Authority** shall provide for the issuance, allowance, modification, amendment, revision, suspension and revocation of general and specific licenses that relate to by-product materials, source materials or special nuclear materials and to devices or equipment that utilize any of those materials. The [department] **authority** may not require a specific license for the use of an X-ray machine within the limits of the license by a licensed dentist, chiropractor or veterinarian or by a person licensed to practice medicine, surgery, osteopathy, chiropractic, naturopathic medicine or any other

system or method of healing. Otherwise the [department] **authority** may require registration or a general or specific license or both registration and a general or specific license with respect to any radiation source.

(2)(a) Each application for a specific license shall be in writing and shall state such information as the [department] **authority** by rule determines both to be necessary to decide the applicant's technical, insurance, financial or other qualifications and to be reasonable and necessary to protect occupational and public health and safety. At any time after the filing of the application for and before the expiration of a specific license the [department] **authority** may require further written statements, and may cause inspections to be made as the [department] **authority** considers necessary, to determine whether the license should be granted, denied, modified, amended, revised, suspended or revoked. An application for a specific license or any statement relating to that application or to any license must be signed by the applicant or licensee.

(b) Each license shall be in such form and contain terms and conditions the [department] **authority** considers necessary to protect the occupational and public health and safety.

(c) A general or specific license or right to possess or use a radiation source under a general or specific license may not be assigned in any manner without the approval of the [department] **authority**.

(d) The terms and conditions of any general or specific license may be modified, amended or revised by rule or order.

(e) Subject to any requirement for registration, the [department] **authority** may by rule recognize a license from any other state or from the federal government as compliance with a license requirement of this section or of ORS 453.635.

(f) When the [department] **authority** finds that a radiation source, a use of a radiation source, a user of a radiation source or a class of such sources, uses or users will not constitute a significant risk to the health and safety of the public, the [department] **authority** may exempt the source, use, user or class, as the case may be, from any requirement for registration or a license.

SECTION 903. ORS 453.675 is amended to read:

453.675. (1) When in the opinion of the Governor, such agreements will promote public health and safety and assist in the peaceful uses of radiation sources, the Governor on behalf of this state shall enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to radiation sources and the assumption thereof by this state.

(2) When a person immediately before the effective date of an agreement under subsection (1) of this section has a license from the federal government to do anything which relates to by-product material, source material or special nuclear material and which on the effective date of the agreement is subject to the control of this state, the person shall be considered to have a like license under ORS 453.605 to 453.800 until the expiration date specified in the license from the federal government or until the end of the 90th day after the person receives notice from the [Department of Human Services] **Oregon Health Authority** that the license will be considered expired, whichever is earlier.

SECTION 904. ORS 453.685 is amended to read:

453.685. (1) The Director of [Human Services] **the Oregon Health Authority** may enter at any reasonable time upon any private or public property, with the permission of the owner or custodian, to determine whether there is compliance with ORS 453.605 to 453.800 and rules lawfully issued pursuant thereto. When such permission is not obtained or given, if the director has grounds to believe that a violation of ORS 453.605 to 453.800 or rules lawfully issued pursuant thereto exists, the director may apply to the proper judicial officer for a warrant to enter upon the property for purposes of inspection, search or seizure consonant with the scope of ORS 453.605 to 453.800; except that in a case where the director has grounds to believe that a violation of ORS 453.605 to 453.800 or rules pursuant thereto exists which presents a clear and present danger to the health, safety or security of the state or its citizens, the director may make such entry of property as is reasonable to abate the danger involved and for that purpose.

(2) Upon application to the proper judicial officer for a warrant to enter property under this section, the judicial officer shall forthwith summarily determine whether or not grounds to issue such warrant exists, and if the judicial officer finds such exists, the judicial officer shall immediately issue a warrant authorizing entry by the director upon the described property for the purposes of ORS 453.605 to 453.800. The director shall not be liable for injury or damage resulting from the action taken or authorized in good faith and without malice under the apparent authority of this section, even though such action is later judicially determined to be unlawful.

SECTION 905. ORS 453.695 is amended to read:

453.695. (1) When the [Department of Human Services] **Oregon Health Authority** by regulation so requires, any person who possesses or uses a radiation source shall cause to be made, in the manner prescribed by the [department] **authority**, records relating to the receipt, storage, transfer and disposition of the source and to such other matters as the [department] **authority** prescribes.

(2) Any person who possesses or uses a radiation source shall cause to be made, in the manner prescribed by the [department] **authority**, records showing the radiation exposure of any individual who is affected by such possession or use and for whom the [department] **authority** by regulation requires personnel monitoring.

(3)(a) Each person who possesses or uses a radiation source and who has reason to believe that any individual has received from that source radiation exposure in excess of the maximum permissible exposure established for an individual by regulations of the [department] **authority** shall give that individual notice of the possible exposure with a copy of any record of the exposure.

(b) Any person who possesses or uses a radiation source and who, in connection with that possession or use, employs an individual for whom the [department] **authority** by regulation requires personnel monitoring, in addition to any requirement of paragraph (a) of this subsection shall, if the individual so requests or if regulations of the [department] **authority** so require, give the individual a copy of the individual's personnel monitoring exposure record annually and at the end of the employment.

(4) Upon the request of the [department] **authority** or its authorized representative, the custodian of any record required by this section shall give a copy of that record to the [department] **authority** or its authorized representative.

SECTION 906. ORS 453.705 is amended to read:

453.705. When a radiation source is in the possession, custody or control of any person who is not equipped to observe or who fails to observe any applicable provision of or regulation pursuant to ORS 453.605 to 453.800, upon the issuance of an emergency order under ORS 453.807 the [Department of Human Services] **Oregon Health Authority** or its authorized representative may cause that source to be impounded.

SECTION 907. ORS 453.715 is amended to read:

453.715. When the [Department of Human Services] **Oregon Health Authority** in writing notifies the Attorney General that, in the judgment of the [department] **authority**, a person has engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any provision of or regulation pursuant to ORS 453.605 to 453.800, if the [department] **authority** so requests, the Attorney General shall apply to the circuit court for the county of that person's residence for an order enjoining such act or practice, or for an order directing compliance; and upon a showing by the [department] **authority** that that person has engaged or is about to engage in any such act or practice, the court may grant a permanent or temporary injunction or restraining order or other order.

SECTION 908. ORS 453.745 is amended to read:

453.745. (1) Subject to the approval of the Governor, to protect the public health and safety and to assist in the peaceful uses of radiation sources the [Department of Human Services] **Oregon Health Authority** may cooperate with the federal government, other states or interstate agencies to perform functions, including inspection, that relate to control of radiation sources.

(2) The [department] **authority** may institute programs to qualify personnel to carry out the provisions of ORS 453.605 to 453.800 and may make those personnel available for participation with

the federal government, other states or interstate agencies in any program in furtherance of the purposes of ORS 453.605 to 453.800.

SECTION 909. ORS 453.752 is amended to read:

453.752. (1) An X-ray machine may not be operated unless the X-ray machine has a valid X-ray machine registration.

(2) Prior to issuance of an X-ray machine registration to a hospital, the X-ray machine shall be approved by an X-ray machine inspector employed by the [*Department of Human Services*] **Oregon Health Authority** or inspected by an accredited radiology inspector. The inspector shall also review procedures used during X-ray machine operation and the adequacy of the physical surroundings and equipment used in conjunction with operation of the X-ray machine.

(3) Prior to issuance of an X-ray machine registration to a facility other than a hospital, the X-ray machine shall be approved by an X-ray machine inspector employed by the [*department*] **authority**.

(4) An accredited radiology inspector conducting a registration inspection on a hospital X-ray machine shall conduct information gathering tests in the manner required by the [*department*] **authority**. The inspector shall make calculations in the manner prescribed by the [*department*] **authority** and shall enter the results and such other information as the [*department*] **authority** may require on a form provided by the [*department*] **authority**.

(5) The [*department*] **authority** shall evaluate the test results submitted by an accredited radiology inspector and shall grant a hospital X-ray machine registration provided that all standards adopted by rule of the [*department*] **authority** are met, a properly completed registration application has been submitted by the X-ray machine owner and all required fees have been paid.

(6) When an X-ray machine is registered by the [*department, the department*] **authority, the authority** shall issue the X-ray machine owner a document, sticker, plate or other device selected by the [*department*] **authority** to evidence registration of the X-ray machine.

SECTION 910. ORS 453.754 is amended to read:

453.754. (1) Each application for an X-ray machine registration shall be in writing and shall state such information as the [*Department of Human Services*] **Oregon Health Authority** by regulation determines to be necessary. The application shall be accompanied by the registration fee due under ORS 453.757.

(2) Not less than 90 nor more than 120 days prior to the expiration of an X-ray machine registration, the [*department*] **authority** shall mail notice to the X-ray machine owner of the pending expiration of the registration. The notice shall inform the owner of the requirements for renewing the registration.

SECTION 911. ORS 453.757 is amended to read:

453.757. (1) The [*Department of Human Services*] **Oregon Health Authority** shall charge a biennial registration fee for a registration granted pursuant to ORS 453.752 in the following amounts for:

(a) Hospital, radiological, chiropractic, osteopathic or medical X-ray machine, \$228.

(b) Hospital X-ray machine when X-ray machine inspection is performed by an accredited radiology inspector, \$116.

(c) Industrial or podiatry X-ray machine, \$152.

(d) Dental, academic or veterinary X-ray machine, \$112.

(e) Microwave oven repair facility, \$112.

(2) The [*Department of Human Services*] **authority** shall charge an annual license fee for a specific license granted pursuant to ORS 453.665 that may not exceed \$3,000 as determined by rule of the [*Department of Human Services*] **authority** and approved by the Oregon Department of Administrative Services.

(3) The fees prescribed by the [*Department of Human Services*] **authority** pursuant to subsections (1)(e) and (2) of this section are due and payable as prescribed by rule of the [*department*] **authority**.

(4) The [department] **authority** shall impose a \$264 fee for accreditation as a radiology inspector and a biennial renewal fee of \$264.

(5) All moneys received by the [department] **authority** under subsections (1)(e) and (2) of this section shall be paid into the State Treasury, deposited in the General Fund to the credit of the Public Health Account, and used exclusively by the [department] **authority** for the purposes of ORS 453.605 to 453.800.

SECTION 912. ORS 453.761 is amended to read:

453.761. (1) An X-ray machine registration for a hospital radiological provider shall be valid for two years, expiring in the second year on the last day of the month of issuance.

(2) An X-ray machine registration for a chiropractic, osteopathic or medical doctor office or clinic shall be valid for two years, expiring in the second year on the last day of the month of issuance.

(3) An X-ray machine registration for a podiatry, dental or veterinary office or clinic or an academic or industrial facility shall be valid for two years, expiring in the second year on the last day of the month of issuance.

(4) Notwithstanding subsection (1), (2) or (3) of this section, the [Department of Human Services] **Oregon Health Authority** shall, at the request of the X-ray machine owner, adjust the registration expiration date of any X-ray machine to coincide with the registration expiration date of other X-ray machines registered to the machine owner. The [department] **authority** shall prorate the registration fee accordingly.

(5) If an X-ray machine or the physical surroundings or equipment associated with the operation of the X-ray machine does not comply with one or more standards adopted by rule of the [department, the department] **authority, the authority** may deny the registration or may grant a provisional registration permitting temporary operation pending compliance with [department] **authority** standards.

(6) The [department] **authority** may require that X-ray machines having a valid registration be repaired, calibrated or modified or the physical surroundings or equipment used in conjunction with the operation of the registered X-ray machine be changed to comply with new standards adopted by rule of the [department] **authority** provided that compliance prior to expiration of the registration is determined by the [department] **authority** to be necessary to protect occupational and public health and safety.

(7) The [department] **authority** may deny, condition, suspend or revoke an X-ray machine registration if the [department] **authority** reasonably believes that the X-ray machine or the physical surroundings or equipment used in conjunction with the operation of the X-ray machine presents a danger to the health or safety of the operator or the public.

(8) An X-ray machine registration shall terminate if the X-ray machine is relocated for use in a physical surrounding other than the physical surrounding the X-ray machine occupied when inspected.

SECTION 913. ORS 453.771 is amended to read:

453.771. Upon a complaint by any person, the [Department of Human Services] **Oregon Health Authority** may investigate any alleged act prohibited by ORS 453.766. If, after investigation by [a department-employed] **an authority-employed** X-ray machine inspector, the [department] **authority** has reason to believe a prohibited act has been committed, the [department] **authority** may impose a civil penalty. Any person subject to a civil penalty under this section may request a hearing before the [department] **authority**. The hearing shall be conducted in accordance with ORS 183.413 to 183.470.

SECTION 914. ORS 453.775 is amended to read:

453.775. The [Department of Human Services] **Oregon Health Authority** shall:

(1) Develop programs to evaluate hazards associated with the use of X-ray machines.

(2) Promulgate standards and make reasonable regulations relating to the registration of X-ray machines, X-ray machine operation, physical surroundings and equipment related to the operation of X-ray machines, operator training and approved X-ray machine operating practices.

- (3) Collect and disseminate information relating to proper X-ray machine operation.
- (4) Provide technical assistance and safety information to X-ray machine users.

SECTION 915. ORS 453.780 is amended to read:

453.780. (1) All applicants for accreditation as radiology inspectors shall possess at a minimum one of the following combinations of education and experience:

(a) One year of experience and one of the following:

- (A) Certification by the American Board of Radiology or the American Board of Health Physics;
- (B) A doctoral degree in a physical or biological science; or

(C) A Doctor of Medicine degree or a degree recognized by the [*Department of Human Services*] **Oregon Health Authority** as an equally qualified health professional degree.

(b) Two years of experience and a master's degree in a physical or biological science.

(c) Four years of experience and a bachelor's degree in a physical or biological science.

(d) Six years of experience and an associate's degree in a physical or biological science.

(2) Experience required of an applicant includes, but is not limited to, measuring ionizing radiation, evaluating radiation safety and documenting radiation protection needs.

(3) In addition to meeting the education and experience requirements of this section, applicants shall be tested on knowledge of [*department*] **authority** rules governing the X-ray machine inspection program, including but not limited to safety requirements and inspection procedures. Applicants shall also complete such additional written or practical testing as the [*department*] **authority** may require.

(4) A license shall not be issued to an applicant unless the applicant has paid all required fees.

SECTION 916. ORS 453.785 is amended to read:

453.785. (1) Accreditation as a radiology inspector shall be valid for two years and shall expire in the second year on the last day of the month of issuance unless renewed.

(2) Accreditation may be renewed if the radiology inspector has complied with the continuing education requirements adopted by rule of the [*Department of Human Services*] **Oregon Health Authority** and has paid the renewal fee.

SECTION 917. ORS 453.790 is amended to read:

453.790. The [*Department of Human Services*] **Oregon Health Authority** may condition, suspend, revoke or refuse to renew accreditation of a radiology inspector for the following reasons:

(1) Knowingly falsifying information included on the inspection report form supplied by the [*department*] **authority**.

(2) Substantially failing to comply with [*department*] **authority** procedures.

(3) Failing to meet [*department*] **authority** accuracy requirements.

(4) Such other grounds as the [*department*] **authority** may establish by rule.

SECTION 918. ORS 453.795 is amended to read:

453.795. The [*Department of Human Services*] **Oregon Health Authority** shall:

(1) Develop testing, training and continuing education standards for accredited radiology inspectors.

(2) Adopt rules for the proper inspection of X-ray machines for registration purposes and for regulating the professional activities of accredited radiology inspectors.

(3) Develop and implement audit programs using [*department-employed*] **authority-employed** X-ray machine inspectors to monitor accredited radiology inspector results and to monitor changes in the performance of registered X-ray machines during the registration period. No charge shall be made to an X-ray machine owner for an audit.

(4) Investigate and resolve complaints against accredited radiology inspectors and their employers.

SECTION 919. ORS 453.800 is amended to read:

453.800. (1) There is created in the General Fund of the State Treasury an X-ray Machine Inspection Account. Moneys credited to the account are continuously appropriated to the [*Department of Human Services*] **Oregon Health Authority** for the carrying out of ORS 453.752 to 453.795.

(2) All registration fees paid pursuant to ORS 453.757 (1) by owners of X-ray machines, all application or renewal fees paid by applicants for accreditation as radiology inspectors under ORS 453.757 (4) and all civil penalties collected under ORS 453.771 are credited to the X-ray Machine Inspection Account.

SECTION 920. ORS 453.805 is amended to read:

453.805. (1) Whenever it appears to the Director of [*Human Services*] **the Oregon Health Authority** that a radiation source is presenting an imminent and substantial endangerment to the health or safety of persons, the director may, without the necessity of prior administrative procedures or hearing, enter an order requiring the person or persons responsible for the radiation source to immediately take such action as is necessary to eliminate the endangerment. The director shall, if requested, provide a prompt hearing after such order, in accordance with ORS chapter 183, after which the order shall be continued, modified or revoked.

(2) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court for the county in which the radiation source is located shall compel compliance with the order in the same manner as with an order of that court.

SECTION 921. ORS 453.807 is amended to read:

453.807. (1) Where the [*Department of Human Services*] **Oregon Health Authority** proposes to refuse to issue or renew a license, to modify, amend, revise, revoke or suspend a license or to determine compliance with or grant exemption from a regulation of the [*department*] **authority**, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Promulgation of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be in accordance with ORS chapter 183.

SECTION 922. ORS 453.864 is amended to read:

453.864. The Director of [*Human Services*] **the Oregon Health Authority** shall adopt rules to carry out ORS 105.555, 431.175 and 453.855 to 453.912. The rules shall be developed in consultation with:

- (1) The State Fire Marshal or designee;
- (2) The director of the Poison Control and Drug Information Program of the Oregon Health and Science University, or a designee thereof;
- (3) The Director of the Department of Environmental Quality, or a designee thereof;
- (4) The Director of the Department of Consumer and Business Services, or a designee thereof;
- (5) The Director of Transportation, or a designee thereof; and
- (6) Any other governmental agency determined appropriate by the [*Department of Human Services*] **Oregon Health Authority** whose advice and information is necessary for the formulation of the rules authorized by this section.

SECTION 923. ORS 453.867 is amended to read:

453.867. (1) Unless determined fit for use, pursuant to ORS 105.555, 431.175 and 453.855 to 453.912 and rules of the [*Department of Human Services*] **Oregon Health Authority**, or as authorized by ORS 453.870, no person shall transfer, sell, use or rent any property knowing or having reasonable grounds to believe it was used as an illegal drug manufacturing site.

(2) All contracts, oral or written, for the transfer, sale, use or rent of property in violation of subsection (1) of this section are voidable between the parties, at the instance of the purchaser, transferee, user or renter. This subsection shall not make voidable any promissory note or other evidence of indebtedness or any mortgage, trust deed or other security interest securing such a promissory note or evidence of indebtedness, where such note or evidence and any such mortgage, trust deed or other security interest were given to a person other than the person transferring, selling, using or renting the property to induce such person to finance the transfer, sale, use or rental of the property. This section shall not impair obligations or duties required to be performed upon termination of a contract, as required by the provisions of the contract, including but not limited to payment of damages or return of refundable deposits.

SECTION 924. ORS 453.870 is amended to read:

453.870. (1) Any property that is not fit for use as determined under ORS 453.876 may be transferred or sold if full, written disclosure, as required by rules of the [Department of Human Services] **Oregon Health Authority**, is made to the prospective purchaser, attached to the earnest money receipt, if any, and shall accompany but not be a part of the sale document nor be recorded. However, such property shall continue to be subject to the provisions of ORS 453.876, regardless of transfer or sale under this section.

(2) Any transferee or purchaser who does not receive the notice described in subsection (1) of this section may set aside the transfer or sale as voidable and bring suit to recover damages for any losses incurred because of the failure to give such notice.

(3) The transferor or seller of any property described in subsection (1) of this section shall notify the [department] **authority** of the transfer or sale as required by rule of the [department] **authority**.

SECTION 925. ORS 453.873 is amended to read:

453.873. For the purposes of enforcement of ORS 105.555, 431.175 and 453.855 to 453.912, the Director of [Human Services] **the Oregon Health Authority** or a designee thereof or the State Fire Marshal or a designee thereof, upon presenting appropriate credentials and a warrant, if necessary, issued under ORS 431.175 to the owner or agent of the owner, may:

(1) Enter, at reasonable times, any property that is known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe that the property has been used as an illegal drug manufacturing site.

(2) Inspect, at reasonable times, within reasonable limits and in a reasonable manner, property known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe the property has been used as an illegal drug manufacturing site.

SECTION 926. ORS 453.876 is amended to read:

453.876. (1) The Director of [Human Services] **the Oregon Health Authority** or a designee thereof, the State Fire Marshal or a designee thereof or any law enforcement agency may determine that property is not fit for use pursuant to ORS 105.555, 431.175 and 453.855 to 453.912 and applicable rules adopted by the [Department of Human Services] **Oregon Health Authority** and may make that determination on site. The determination is effective immediately and renders the property not fit for use.

(2) The owner may appeal the determination, to the agency that made the determination, within 30 working days after the determination, pursuant to rules of the agency, or to circuit court.

(3) The appeal to the agency is not a contested case under ORS chapter 183. The question on appeal is limited to whether the site is an illegal drug manufacturing site.

(4) If a determination that property is not fit for use is made under subsection (1) of this section, a local government or the state may provide notice that the real property has been determined to be an illegal drug manufacturing site and not fit for use to:

(a) A person in each residence located within 300 feet of the real property if the real property is located within an urban growth boundary; or

(b) A person in each residence located within one quarter mile of the real property if the real property is not located within an urban growth boundary.

(5) The notice described in subsection (4) of this section shall be in writing and shall include:

(a) The address of the real property that is determined to be not fit for use;

(b) A statement that the determination is subject to appeal and that the real property may be determined to be fit for use if the appeal is successful or if the real property is certified as decontaminated;

(c) The telephone number of the office of the [Department of Human Services] **Oregon Health Authority** that is responsible for overseeing the decontamination of illegal drug manufacturing sites; and

(d) The website for the [Department of Human Services] **Oregon Health Authority** office responsible for overseeing the decontamination of illegal drug manufacturing sites that contains in-

formation on the dangers associated with real property that has been used as an illegal drug manufacturing site.

SECTION 927. ORS 453.879 is amended to read:

453.879. When the Director of [*Human Services*] **the Oregon Health Authority** or a designee thereof, the State Fire Marshal or designee thereof or any law enforcement agency makes a determination that property subject to ORS 105.555, 431.175 and 453.855 to 453.912 is not fit for use, the Director of [*Human Services*] **the Oregon Health Authority** or designee thereof shall notify the Director of the Department of Consumer and Business Services of the determination. The Director of the Department of Consumer and Business Services shall list the property as not fit for use until the Director of the Department of Consumer and Business Services is notified that the property has been certified by the [*Department of Human Services*] **Oregon Health Authority** pursuant to ORS 453.885, or the initial determination is reversed on appeal, or the property is destroyed. Upon receipt of the certificate, the Director of the Department of Consumer and Business Services shall cause the property to be removed from the list described in this section.

SECTION 928. ORS 453.885 is amended to read:

453.885. (1) The owner of property determined to be not fit for use under ORS 105.555, 431.175 and 453.855 to 453.912 who desires to have the property certified as fit for use may use the services of a contractor licensed by the [*Department of Human Services*] **Oregon Health Authority** to decontaminate the property or, upon approval by the [*department*] **authority**, the owner, or an agent of the owner, may perform the decontamination work. The contractor, in coordination with the owner or agent of the owner, shall prepare and submit a written work plan for decontamination to the [*department*] **authority**. If the work plan is approved and the decontamination work is completed according to the plan and is properly documented, the [*department*] **authority** shall certify the property as having been decontaminated in compliance with rules of the [*department*] **authority**. Upon the completion of the work plan, the [*department*] **authority** shall require the licensed contractor's affidavit of compliance with the approved work plan.

(2) The property owner shall notify the Director of the Department of Consumer and Business Services of the certification. No person who is not licensed by the [*Department of Human Services*] **authority** under ORS 105.555, 431.175 and 453.855 to 453.912 shall advertise to undertake or perform the work necessary to decontaminate property determined to be not fit for use under ORS 105.555, 431.175 and 453.855 to 453.912.

(3) Upon receipt of the certificate and a request by the property owner to remove the property from the list, the Director of the Department of Consumer and Business Services shall cause the property to be removed from the list.

SECTION 929. ORS 453.888 is amended to read:

453.888. (1) The [*Department of Human Services*] **Oregon Health Authority** by rule shall establish performance standards for contractors under ORS 105.555, 431.175 and 453.855 to 453.912.

(2) The [*department*] **authority** shall train and test, or may approve courses to train and test, contractors' personnel on the essential elements in assessing premises used as an illegal drug manufacturing site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment and relevant federal regulations and state rules.

(3) Upon the contractor's supervisory personnel's successful completion of the training and testing and the contractor having complied with the rules of the [*department*] **authority** and having paid the required fee, the contractor shall be licensed. Licenses are renewable biennially, as determined by rule of the [*department*] **authority**, upon supervisory personnel's successful completion of any required refresher course.

(4) The [*department*] **authority** may deny, suspend or revoke the license of any contractor pursuant to ORS chapter 183 for:

(a) Failing to:

(A) Perform decontamination work under the supervision of trained personnel;

(B) File a work plan;

(C) Perform work pursuant to the plan;

- (D) Pay a civil penalty imposed under ORS 105.555, 431.175 and 453.855 to 453.912; or
- (E) Perform work that meets the requirements of ORS 453.903.

(b) Committing fraud or misrepresentation in:

- (A) Applying for a license;
- (B) Seeking approval of a work plan; or
- (C) Documenting completion of the work to the *[department]* **authority**.

(5) The *[department]* **authority** may impose a civil penalty not to exceed \$500, in addition to or in lieu of license denial, suspension or revocation, pursuant to ORS chapter 183.

SECTION 930. ORS 453.891 is amended to read:

453.891. Between the dates of scheduled training for contractors under ORS 453.888, the *[Department of Human Services]* **Oregon Health Authority** shall be available to consult with licensed contractors, as well as those planning to become licensed, on information pertinent to illegal drug manufacturing sites, including but not limited to chemicals found at such sites and their toxicity, new or revised decontamination procedures, personal protective equipment and applicable federal regulations and state rules.

SECTION 931. ORS 453.894 is amended to read:

453.894. (1) The *[Department of Human Services]* **Oregon Health Authority** shall establish by rule a schedule of fees for at least the following:

- (a) Initial licenses and renewal under ORS 105.555, 431.175 and 453.855 to 453.912.
- (b) Training courses and examinations conducted by or on behalf of the *[department]* **authority**.
- (c) Reexaminations for failing the initial examinations.
- (d) Review of work plans.

(2) The fees established under subsection (1) of this section shall be based upon the costs of the *[department]* **authority** in carrying out the provisions of ORS 105.555, 431.175 and 453.855 to 453.912.

(3) If a license renewal application and fee is not received by the *[department]* **authority** within 15 days after the expiration of the license, a penalty of \$100 shall be added and collected.

(4) The fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the Public Health Account. Such moneys are continuously appropriated to the *[Department of Human Services to pay the department's]* **Oregon Health Authority to pay the authority's** expenses in administering the provisions of ORS 105.555, 431.175 and 453.855 to 453.912.

(5) Subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, any fee or change shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

SECTION 932. ORS 453.897 is amended to read:

453.897. The *[Department of Human Services]* **Oregon Health Authority** shall provide lists of the names of contractors licensed under ORS 105.555, 431.175 and 453.855 to 453.912 to the Director of the Department of Consumer and Business Services who shall distribute the lists to local building code enforcement agencies. The local agencies shall make the list available on request and shall supply a copy to any property owner whose property is determined to be not fit for use under ORS 105.555, 431.175 and 453.855 to 453.912.

SECTION 933. ORS 453.900 is amended to read:

453.900. The *[Department of Human Services]* **Oregon Health Authority** may contract with state or local agencies or private persons to perform any inspection or to obtain any samples relative to determining the adequacy of decontamination work.

SECTION 934. ORS 453.903 is amended to read:

453.903. The *[Department of Human Services]* **Oregon Health Authority** shall evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension that prohibits the contractor from performing

additional work until deficiencies have been corrected on the project. Civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 935. ORS 453.909 is amended to read:

453.909. Counties and cities by ordinance may prohibit use or occupancy of or provide for regulation of any property so long as such prohibition or regulation is consistent with ORS 105.555, 431.175 and 453.855 to 453.912 and rules of the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 936. ORS 453.995 is amended to read:

453.995. (1) In addition to any other liability or penalty provided by law, the [*Department of Human Services*] **Oregon Health Authority** may impose a civil penalty on a person for violation of:

(a) ORS 453.885; or

(b) ORS 453.005 to 453.135 or rules adopted under ORS 453.005 to 453.135 by the [*department*]

authority.

(2) A civil penalty imposed under this section may not exceed \$2,000.

(3) ORS 183.745 applies to civil penalties imposed under this section.

SECTION 937. ORS 454.235 is amended to read:

454.235. (1) The governing body of the municipality, by proposed charter amendment or ordinance, may refer the question of acquiring and constructing a disposal or water system, as defined in ORS 448.115, to a vote of its electors, and after approval thereof by a majority of such electors, may authorize the issuance of and cause to be issued bonds of the municipality for such purposes. The bonds may be general obligation, limited obligation or self-liquidating in character in a sum not more than the amount authorized at such election and shall be subject to ORS 454.205 to 454.255. The bonds may provide for payment of principal and interest thereon from service charges to be imposed by the governing body for services to be extended through employment and use of the disposal or water system. If service charges are imposed to be paid as provided in ORS 454.225, such portion thereof as may be deemed sufficient shall be set aside as a sinking fund for payment of interest on the bond and the principal thereof at maturity.

(2)(a) When the Environmental Quality Commission or the [*Department of Human Services*] **Oregon Health Authority** enters an order pursuant to ORS chapter 183 that requires the acquisition or construction of a disposal system or a water system in a municipality, respectively, the governing body of the municipality shall refer to its electors the question of a bond issue in an amount sufficient to finance the necessary acquisition or construction of such disposal or water system. The election shall be held within one year of the date the order of the commission or [*department*] **authority** is entered.

(b) If, within eight months after the order of the commission or [*department*] **authority**, the governing body of the municipality has not called an election in compliance with paragraph (a) of this subsection, the commission or [*department*] **authority**, whichever is appropriate, may apply to the circuit court of the county in which the municipality is located, or to the Circuit Court of Marion County for an order compelling the holding of an election.

(c) If the electors do not approve the disposal system bond issue, submitted pursuant to paragraph (a) or (b) of this subsection, the commission may apply to the circuit court of the county in which the municipality is located or to the Circuit Court of Marion County for an order directing that self-liquidating bonds of the municipality be issued and sold pursuant to ORS 454.205 to 454.255, and directing that the proceeds be applied to the acquisition or construction of a disposal system required to comply with the final order of the commission. If the court finds that the disposal system required by the final order of the commission is necessary under the rules or standards of the commission, it shall issue an order directing that such bonds be issued and sold without elector approval in such an amount as the court finds necessary to acquire or construct such disposal system, and that the proceeds be applied for such purposes.

(d) Any court proceeding authorized by paragraphs (b) and (c) of this subsection shall be advanced on the court docket for immediate hearing.

SECTION 938. ORS 455.680 is amended to read:

455.680. (1) Plan approval and permits shall be obtained from the Department of Consumer and Business Services prior to construction, enlargement or alteration of any recreation park, picnic park or organizational camp as defined in ORS 446.310.

(2) If the department determines that the work conforms to the approved plans and specifications, it shall issue a final approval which shall, if all other conditions of ORS 455.010 to 455.240, 455.410 to 455.450 and 455.595 to 455.740 are met, authorize the issuance of a license by the [*Department of Human Services*] **Oregon Health Authority** to operate the park or, in the case of then currently licensed parks, shall authorize continued operation for the remaining part of the licensing year.

(3) In accordance with ORS 455.010 to 455.240, 455.410 to 455.450 and 455.595 to 455.740 and in consultation and agreement with the [*Department of Human Services, the Department of Consumer and Business Services*] **authority, the department** shall adopt rules to carry out this section. The rules adopted pursuant to this section shall be a specialty code as defined in ORS 455.010.

SECTION 939. ORS 458.525 is amended to read:

458.525. (1) The Housing and Community Services Department shall serve as the lead public body on hunger and homelessness issues.

(2) The Interagency Council on Hunger and Homelessness is established. The Director of the Housing and Community Services Department shall chair the council. In addition to the director, the council shall consist of 15 members as follows:

(a) One member representing each of the following:

(A) The Housing and Community Services Department.

(B) The Department of Corrections.

(C) The Economic and Community Development Department.

(D) The State Commission on Children and Families.

(E) The Department of Education.

(F) The State Department of Agriculture.

(G) The Employment Department.

(H) The Department of Veterans' Affairs.

(I) The Department of Transportation.

(J) The Oregon Youth Authority.

(K) The Department of Community Colleges and Workforce Development.

(L) The Department of Justice.

(M) The Oregon Health Authority.

(b) [*Three*] **Two** members representing the Department of Human Services. Of the [*three*] **two** members representing that department:

(A) One shall have expertise on issues affecting services to adults and families.

[*B) One shall have expertise on issues affecting health services.*]

[*C)*] **(B)** One shall have expertise on issues affecting services to seniors and to persons with disabilities.

(3) Each council member must be the administrative head of the listed agency or an employee of that agency who is designated by the administrative head and who has an agency policy-making role affecting hunger, food programs, nutrition, homelessness or related issues.

(4) The Hunger Relief Task Force shall adopt recommendations and proposals as the task force deems appropriate. The council shall be responsible for receiving the recommendations and proposals adopted by the task force and the recommendations of any state body relating to the issue of homelessness, and for forwarding the recommendations and proposals to state agencies or other public or private organizations for action that the council deems appropriate:

(a) To ensure the coordination of state agency hunger relief efforts and homelessness relief efforts;

(b) To ensure that food and nutrition programs, other hunger relief efforts and homelessness relief efforts operate efficiently and effectively;

(c) To monitor the utilization of federal hunger relief efforts and homelessness relief efforts and provide outreach to expand underutilized programs; and

(d) To encourage the coordination of state and local programs, public and private antipoverty programs affecting food distribution and programs for assisting the homeless.

(5) The Director of the Housing and Community Services Department, in collaboration with the Director of Human Services, shall convene council meetings at least quarterly.

(6) The Director of the Housing and Community Services Department shall provide the council with staff support the director deems appropriate, by using Housing and Community Services Department employees or by contract. The director shall also provide the council with supplies as the director deems appropriate.

SECTION 940. ORS 458.532 is amended to read:

458.532. (1) The Hunger Relief Task Force is established in the Housing and Community Services Department. The task force shall consist of not more than 28 members appointed as follows:

(a) The President of the Senate shall appoint one member from among members of the Senate.

(b) The Senate Minority Leader shall appoint one member from among members of the Senate.

(c) The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives.

(d) The House Minority Leader shall appoint one member from among members of the House of Representatives.

(e) The Director of the Housing and Community Services Department, with the advice of the Director of Human Services **and the Director of the Oregon Health Authority**, shall appoint the following:

(A) One member representing the Department of Education who has experience in child nutrition programs.

(B) One member representing the Department of Human Services who has experience in food stamp programs.

(C) One member representing the [*Department of Human Services*] **Oregon Health Authority** who has experience in the Women, Infants and Children program.

(D) One member representing the State Department of Agriculture.

(E) One member representing the Oregon Food Bank.

(F) One member representing United Way of America or a successor organization.

(G) One member representing an Oregon low-income advocacy group.

(H) One member who is a student at an institution of higher education.

(I) One member representing the Community Action Directors of Oregon.

(J) One member representing the food retailing industry.

(K) One member representing the food growing and processing industries.

(L) One member who is a direct service provider.

(M) One member representing county government.

(N) One member representing the migrant community.

(O) Three members representing the religious community.

(P) One member representing the Housing and Community Services Department.

(Q) No more than six additional members having qualifications other than those of members described in subparagraphs (A) to (P) of this paragraph.

(2) A member serves for a three-year term. A member may be reappointed.

(3) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term. The appointing authority may appoint a replacement for any member of the task force who misses more than two consecutive meetings of the task force.

(4) One-half of the task force membership constitutes a quorum for the transaction of business.

(5) The Director of the Housing and Community Services Department shall provide the task force with staff support the director deems appropriate, by using Housing and Community Services

Department employees or by contract. The director shall also provide for the payment of appropriate task force operating expenses.

SECTION 941. ORS 459.386 is amended to read:

459.386. As used in ORS 459.386 to 459.405:

(1) "Biological waste" includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(2) "Cultures and stocks" includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures and stocks" does not include throat and urine cultures.

(3) "Disposal" means the final placement of treated infectious waste in a disposal site operating under a permit issued by a state or federal agency.

(4) "Infectious waste" includes biological waste, cultures and stocks, pathological waste and sharps.

(5)(a) "Pathological waste" includes:

(A) Biopsy materials and all human tissues;

(B) Anatomical parts that emanate from surgeries, autopsies and obstetrical and laboratory procedures; and

(C) Animal carcasses exposed to pathogens in research and the bedding and other waste from such animals.

(b) "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(6) "Sharps" includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(7) "Storage" means the temporary containment of infectious waste in a manner that does not constitute treatment or disposal of such waste.

(8) "Transportation" means the movement of infectious waste from the point of generation over a public highway to any intermediate point or to the point of final treatment.

(9) "Treatment" means incineration, sterilization or other method, technique or process approved by the [Department of Human Services] **Oregon Health Authority** that changes the character or composition of any infectious waste so as to render the waste noninfectious.

SECTION 942. ORS 459.390 is amended to read:

459.390. (1) Infectious waste shall be segregated from other wastes by separate containment at the point of generation. Enclosures used for storage of infectious waste shall be secured to prevent access by unauthorized persons and shall be marked with prominent warning signs.

(2) Infectious waste, except for sharps, shall be contained in disposable red plastic bags or containers made of other materials impervious to moisture and strong enough to prevent ripping, tearing or bursting under normal conditions of use. The bags or containers shall be closed to prevent leakage or expulsion of solid or liquid wastes during storage, collection or transportation.

(3) Sharps shall be contained for storage, collection, transportation and disposal in leakproof, rigid, puncture-resistant red containers that are taped closed or tightly lidded to prevent loss of the contents. Sharps may be stored in such containers for more than seven days.

(4) All bags, boxes or other containers for infectious waste and rigid containers of discarded sharps shall be clearly identified as containing infectious waste.

(5) Infectious waste shall be stored at temperatures and only for times established by rules of the [Department of Human Services] **Oregon Health Authority**.

(6) Infectious waste shall not be compacted before treatment and shall not be placed for collection, storage or transportation in a portable or mobile trash compactor.

(7) Infectious waste contained in disposable bags as specified in this section shall be placed for collection, storage, handling or transportation in a disposable or reusable pail, carton, box, drum,

dumpster, portable bin or similar container. The container shall have a tight-fitting cover and be kept clean and in good repair. The container may be of any color and shall be conspicuously labeled with the international biohazard symbol and the words "Biomedical Waste" on the sides so as to be readily visible from any lateral direction when the container is upright.

(8) Each time a reusable container for infectious waste is emptied, the container shall be thoroughly washed and decontaminated unless the surfaces of the container have been protected from contamination by a disposable red liner, bag or other device removed with the waste.

(9) Trash chutes shall not be used to transfer infectious waste between locations where it is contained or stored.

(10) Generators that produce 50 pounds or less of infectious waste in any calendar month shall be exempt from the specific requirements of subsections (5), (7) and (8) of this section.

SECTION 943. ORS 459.395 is amended to read:

459.395. (1) Pathological wastes shall be treated by incineration in an incinerator that provides complete combustion of waste to carbonized or mineralized ash. The ash shall be disposed of as provided in rules adopted by the Environmental Quality Commission. However, if the Department of Environmental Quality determines that incineration is not reasonably available within a watershed, pathological wastes may be disposed of in the same manner provided for cultures and stocks.

(2) Cultures and stocks shall be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by [Department of Human Services] **Oregon Health Authority** rule. Sterilized waste may be disposed of in a permitted land disposal site if it is not otherwise classified as hazardous waste.

(3) Liquid or soluble semisolid biological wastes may be discharged into a sewage treatment system that provides secondary treatment of waste.

(4) Sharps and biological wastes may be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by [Department of Human Services] **authority** rule. Sharps may be disposed of in a permitted land disposal site only if the sharps are in containers as required in ORS 459.390 (3) and are placed in a segregated area of the landfill.

(5) Other methods of treatment and disposal may be approved by rule of the [Environmental Quality Commission] **commission**.

SECTION 944. ORS 466.135 is amended to read:

466.135. Upon receipt of an application for a hazardous waste disposal site permit, the Department of Environmental Quality shall cause copies of the application to be sent to affected state agencies, including the [Department of Human Services] **Oregon Health Authority**, the Public Utility Commission, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond by making a recommendation as to whether the permit application should be granted. If the [Department of Human Services] **Oregon Health Authority** recommends against granting the permit, the Environmental Quality Commission must refuse to issue the permit. Recommendation from other agencies shall be considered as evidence in determining whether to grant the permit.

SECTION 945. ORS 466.280 is amended to read:

466.280. Upon receipt of an application for a PCB disposal facility permit, the Department of Environmental Quality shall cause copies of the application to be sent to affected state agencies, including the [Department of Human Services] **Oregon Health Authority**, the Public Utility Commission, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond within the period specified by the Department of Environmental Quality by making a written recommendation as to whether the permit application should be granted. Recommendation from other agencies shall be considered in determining whether to grant the permit.

SECTION 946. ORS 466.605 is amended to read:

466.605. As used in ORS 466.605 to 466.680 and 466.990 (3) and (4):

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the Department of Environmental Quality.

(3) "Cleanup costs" means all costs associated with the cleanup of a spill or release incurred by the state, its political subdivision or any person with written approval from the department when implementing ORS 466.205, 466.605 to 466.680, 466.990 (3) and (4) and 466.995 (2) or 468B.320.

(4) "Commission" means the Environmental Quality Commission.

(5) "Department" means the Department of Environmental Quality.

(6) "Director" means the Director of the Department of Environmental Quality.

(7) "Hazardous material" means one of the following:

(a) A material designated by the commission under ORS 466.630.

(b) Hazardous waste as defined in ORS 466.005.

(c) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005.

(d) Communicable disease agents as regulated by the [*Department of Human Services*] **Oregon Health Authority** under ORS 431.035 to 431.530, 433.001 to 433.045 and 433.110 to 433.770.

(e) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(8) "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(9) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof and the federal government and any agency thereof.

(10) "Reportable quantity" means one of the following:

(a) A quantity designated by the commission under ORS 466.625.

(b) The lesser of:

(A) The quantity designated for hazardous substances by the United States Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(B) The quantity designated for hazardous waste under ORS 466.005 to 466.385, 466.990 (1) and (2) and 466.992;

(C) Any quantity of radioactive material, radioactive substance or radioactive waste;

(D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property with oil, but excluding normal discharges from properly operating marine engines; or

(E) If spilled on land, any quantity of oil over one barrel.

(c) Ten pounds unless otherwise designated by the commission under ORS 466.625.

(11) "Respond" or "response" means:

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release of oil or hazardous material;

(b) First aid, rescue or medical services, and fire suppression; or

(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release or threatened spill or release if action is not taken.

(12) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A, 468B or 469, ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law or while being stored or used for its intended purpose.

(13) "Threatened spill or release" means oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of the state.

SECTION 947. ORS 466.615 is amended to read:

466.615. Nothing in ORS 466.605 to 466.680, 466.990 (3) and (4) and 466.995 (2) is intended to grant the Environmental Quality Commission or the Department of Environmental Quality authority over any radioactive substance regulated by the [*Department of Human Services*] **Oregon Health Authority** under ORS chapter 453, or any radioactive material or waste regulated by the State Department of Energy or Energy Facility Siting Council under ORS chapter 469.

SECTION 948. ORS 468.035 is amended to read:

468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions, other states or the federal government, in respect to any proceedings and all matters pertaining to control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local government.

(h) Shall serve as the agency of the state for receipt of moneys from the federal government or other public or private agencies for the purposes of air and water pollution control, studies or research and to expend moneys after appropriation thereof for the purposes given.

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(L) Shall encourage the formulation and execution of plans in conjunction with air and water pollution control agencies or with associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air or water pollution, for the prevention and abatement of pollution.

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state.

(n) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(o) Shall coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(2) Nothing in this section shall affect the authority of the [*Department of Human Services*] **Oregon Health Authority** to make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115 to 448.325, 624.010 to 624.121 and 624.310 to 624.430; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

(3) Nothing in this section shall prevent the State Department of Agriculture or the State Forestry Department from independently receiving moneys from a public or private agency for the purposes of preventing or controlling air or water pollution resulting from agricultural or silvicultural activities or soil erosion, or for research related to such purposes.

(4)(a) In awarding a public contract under ORS 279.835 to 279.855 or ORS chapter 279A, 279B or 279C for a removal or remedial action pursuant to ORS 465.200 to 465.545, a corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative Services, when administering the establishment of such a contract on behalf of the Department of Environmental Quality under ORS 279A.050 and 279A.140, shall subtract from the amount of any bid or proposal the hazardous waste management fees and solid waste fees that would be required by law to be paid to the department for waste that would be disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable preprocurement estimates of the amount of waste that would be disposed of under the contract and that would be subject to those fees.

(b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates of amounts of waste that would be disposed of in projects of this character is technically challenging and requires the application of professional discretion. Therefore, no award of a contract under this subsection shall be subject to challenge, under ORS 279B.410, 279B.415 or 279C.460 or otherwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

(c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the establishment, by or on behalf of the department, of master contracts by which the department engages the services of a contractor over a period of time for the purpose of issuing work orders for the performance of environmental activities on a project or projects for which the amounts of waste to be disposed of were not reasonably identified at the inception of the master contracts. However, the department shall require any contractor under a master contract to apply the subtraction for fees under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection. Nothing in this subsection shall be construed to prohibit the department or the Oregon Department of Administrative Services from establishing contracts pursuant to this section through contracting procedures authorized by ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C that do not require the solicitation of bids or proposals.

SECTION 949. ORS 468.055 is amended to read:

468.055. In addition to the authority granted under ORS 190.003 to 190.130, when authorized by the Environmental Quality Commission and the [*Department of Human Services*] **Oregon Health Authority**, the Director of the Department of Environmental Quality and the Director of [*Human Services*] **the Oregon Health Authority** may contract on behalf of their respective agencies for the purposes of carrying out the functions of either agency, defining areas of responsibility, furnishing services or employees by one to the other and generally providing cooperative action in the interests of public health and the quality of the environment in Oregon. Each contracting agency is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest.

SECTION 950. ORS 468.060 is amended to read:

468.060. On its own motion after public hearing, the Environmental Quality Commission may grant specific authorization to the [*Department of Human Services*] **Oregon Health Authority** or to any county, district or city board of health to enforce any rule of the commission relating to air or water pollution or solid wastes.

SECTION 951. ORS 468A.707 is amended to read:

468A.707. (1) The Environmental Quality Commission by rule shall:

(a) Establish an asbestos abatement program that assures the proper and safe abatement of asbestos hazards through contractor licensing and worker training.

(b) Establish the date after which a contractor must be licensed under ORS 468A.720 and a worker must hold a certificate under ORS 468A.730.

(c) Establish criteria and provisions for granting an extension of time for contractor licensing and worker certification, which may consider the number of workers and the availability of accredited training courses.

(2) The program established under subsection (1) of this section shall include at least:

(a) Criteria for contractor licensing and training;

(b) Criteria for worker certification and training;

(c) Standardized training courses; and

(d) A procedure for inspecting asbestos abatement projects.

(3) In establishing the training requirements under subsections (1) and (2) of this section, the commission shall adopt different training requirements that reflect the different levels of responsibility of the contractor or worker, so that within the category of contractor, sublevels shall be separately licensed or exempted and within the category of worker, sublevels shall be separately certified or exempted. The commission shall specifically address as a separate class, those contractors and workers who perform small scale, short duration renovating and maintenance activity. As used in this subsection, "small scale, short duration renovating and maintenance activity" means a task for which the removal of asbestos is not the primary objective of the job, including but not limited to:

(a) Removal of asbestos-containing insulation on pipes;

(b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(c) Replacement of an asbestos-containing gasket on a valve;

(d) Installation or removal of a small section of drywall; or

(e) Installation of electrical conduits through or proximate to asbestos-containing materials.

(4) The Department of Environmental Quality, on behalf of the commission, shall consult with the Department of Consumer and Business Services and the [*Department of Human Services*] **Oregon Health Authority** about proposed rules for the asbestos abatement program to assure that the rules are compatible with all other state and federal statutes and regulations related to asbestos abatement.

(5) The Department of Environmental Quality shall cooperate with the Department of Consumer and Business Services and the [*Department of Human Services*] **Oregon Health Authority** to promote proper and safe asbestos abatement work practices and compliance with the provisions of ORS 279B.055 (2)(g), 279B.060 (2)(g), 279C.365 (1)(j), 468.126, 468A.135 and 468A.700 to 468A.760.

SECTION 952. ORS 468B.150 is amended to read:

468B.150. As used in ORS 448.268, 448.271 and 468B.150 to 468B.190:

(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under ORS 468B.175 or the [*Department of Human Services*] **Oregon Health Authority** under ORS 448.268.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(3) "Ground water management area" means an area in which contaminants in the ground water have exceeded the levels established under ORS 468B.165, and the affected area is subject to a declaration under ORS 468B.180.

(4) "Fertilizer" has the meaning given that term in ORS 633.311.

(5) "Pesticide" has the meaning given that term in ORS 634.006.

SECTION 953. ORS 469.525 is amended to read:

469.525. Notwithstanding any other provision of this chapter, no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state, except as follows:

(1) Wastes generated before June 1, 1981, through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes which are disposed of at sites approved by the Energy Facility Siting Council in accordance with ORS 469.375.

(2) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall be disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality and in a manner consistent with rules adopted by the Department of Environmental Quality after consultation with and approval by the [*Department of Human Services*] **Oregon Health Authority**.

(3) Maintenance of radioactive coal ash at the site of a thermal power plant for which a site certificate has been issued pursuant to this chapter shall not constitute operation of a waste disposal facility so long as such coal ash is maintained in accordance with the terms of the site certificate as amended from time to time as necessary to protect the public health and safety.

SECTION 954. ORS 469.533 is amended to read:

469.533. Notwithstanding ORS chapter 401, the State Department of Energy in cooperation with the [*Department of Human Services*] **Oregon Health Authority** and the Office of Emergency Management shall establish rules for the protection of health and procedures for the evacuation of people and communities who would be affected by radiation in the event of an accident or a catastrophe in the operation of a nuclear power plant or nuclear installation.

SECTION 955. ORS 469.559 is amended to read:

469.559. (1) Notwithstanding the authority of the [*Department of Human Services*] **Oregon Health Authority** pursuant to ORS 453.605 to 453.800 to regulate radiation sources or the requirements of ORS 469.525, the Energy Facility Siting Council may enter into and carry out cooperative agreements with the Secretary of Energy pursuant to Title I and the Nuclear Regulatory Commission pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604, and perform or cause to be performed any and all acts necessary to be performed by the state, including the acquisition by condemnation or otherwise, retention and disposition of land or interests therein, in order to implement that Act and rules, standards and guidelines adopted pursuant thereto. The Energy Facility Siting Council may adopt, amend or repeal rules in accordance with ORS chapter 183 and may receive and disburse funds in connection with the implementation and administration of this section.

(2) The Energy Facility Siting Council and the State Department of Energy may enter into and carry out cooperative agreements and arrangements with any agency of the federal government implementing the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. section 9601 et seq., to clean up wastes and contaminated material, including overburden, created by uranium mining before June 29, 1989. Any such project need not obtain a site certificate from the council, but shall nevertheless comply with all applicable, relevant or appropriate state standards including but not limited to those set forth in ORS 469.375 and rules adopted by the council and other state agencies to implement such standards.

(3) The Governor may do any and all things necessary to implement the requirements of the federal Acts referred to in subsections (1) and (2) of this section.

(4) Notwithstanding ORS 469.553, after June 25, 1979, no site certificate is required for the cleanup and disposal of an inactive or abandoned uranium mill tailings site as authorized under subsection (1) of this section and Title I of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604.

SECTION 956. ORS 469.611 is amended to read:

469.611. Notwithstanding ORS chapter 401:

(1) The Director of the State Department of Energy shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to ensure that the response to a radioactive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The [*Department of Human Services*] **Oregon Health Authority** shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the team at the scene of a radiological accident, the [*Director of the State Department of Energy*] **director** may designate other technical advisors to work with the local response agencies.

(4) The [*Department of Human Services*] **authority** shall assist the [*Director of the State Department of Energy*] **director** to ensure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The [*Department of Human Services*] **authority** shall report annually to the [*Director of the State Department of Energy*] **director** on training of emergency response personnel.

SECTION 957. ORS 471.190 is amended to read:

471.190. (1) The holder of a temporary sales license may sell at retail by the drink wine, malt beverages, cider and distilled liquor. Distilled liquor served by the holder of a temporary sales license must be purchased from a retail sales agent of the Oregon Liquor Control Commission. The holder of a temporary sales license must provide food service as required by commission rule.

(2) A temporary sales license may be issued only to:

(a) Nonprofit or charitable organizations that are registered with the state.

(b) A political committee that has filed a statement of organization under ORS 260.039 or 260.042.

(c) State agencies.

(d) Local governments, and agencies and departments of local governments.

(e) Persons not otherwise described in this subsection, as long as the applicant submits a plan that is approved by the commission detailing how minors will be prevented from gaining access to alcoholic beverages and how minors will be prevented from gaining access to any portion of the licensed premises prohibited to minors under ORS 471.430 (3) or any rule adopted by the commission.

(3) The holder of a temporary sales license may sell wine, malt beverages or cider in factory-sealed containers for consumption off the licensed premises.

(4) The commission may by rule establish additional eligibility requirements for temporary sales licenses.

(5) Subject to such qualifications as the commission may establish by rule, persons who hold a full or limited on-premises sales license are eligible for temporary sales licenses.

(6) A person holding a temporary sales license is not required to obtain a temporary restaurant license or mobile unit license under ORS chapter 624 if only wine, malt beverages and cider in single-service containers are served and only nonperishable food items that are exempted from licensure by the [*Department of Human Services*] **Oregon Health Authority** are served.

(7) Employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization licensed under this section are not required to have server permits nor to complete an alcohol server education program and examination under ORS 471.542. The commission by rule may establish education requirements for servers described in this subsection.

(8) Notwithstanding ORS 471.392 to 471.400, a temporary sales license may be issued to a nonprofit trade association that has a membership primarily comprised of persons that hold winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under ORS 471.227.

SECTION 958. ORS 471.235 is amended to read:

471.235. (1) A wholesale malt beverage and wine license shall allow the importation, storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control Commission, and the export of wine, cider and malt beverages, and the importation and sale to the commission and the export of wine of alcoholic content in excess of 21 percent alcohol by volume. No such licensee shall sell any alcoholic liquor for consumption upon the licensed premises. However, a wholesale malt beverage and wine licensee may sell naturally fermented wine or cider in quantities of not less than four gallons nor more than 55 gallons at any one time to consumers for consumption not on the licensed premises. Wholesale malt beverage and wine licensees may sell malt beverages containing not more than eight percent alcohol by volume in quantities not less than five gallons to any unlicensed organization, lodge, picnic party or private gathering. Such malt beverages shall not be sold by such unlicensed group. A wholesale malt beverage and wine license shall permit the licensee also to sell malt beverages at wholesale only, to persons holding licenses authorizing them to resell such beverages at retail. Employees of wholesale malt beverage and wine licensees may serve sample tastings of malt beverages, cider and wine at alcoholic beverage industry trade shows, seminars and conventions and at alcoholic beverage industry sample tastings for employees of retail licensees.

(2) Nothing in subsection (1) of this section shall be considered to prohibit the transportation or wholesale sale or distribution of malt beverage or wine by a wholesale malt beverage and wine licensee to any alcoholic treatment center licensed by the [*Department of Human Services*] **Oregon Health Authority**.

(3) A wholesale malt beverage and wine licensee may impose an additional handling fee on any wine sold to any retailer in this state if the quantity of wine sold to the retailer is less than the smallest multiple-package case available to be sold and the handling fee is uniform for all licensees.

SECTION 959. ORS 471.333 is amended to read:

471.333. (1) Except as provided in subsections (2) and (3) of this section, the Oregon Liquor Control Commission shall not refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment.

(2) The commission may refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment in violation of a city ordinance relating to sanitation only if the licensee is convicted of violating the ordinance.

(3) The commission may refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment in violation of ORS 447.010 to 447.156 and 447.992 or the laws, orders or rules relating to public health of the [*Department of Human Services*] **Oregon Health Authority** or the State Department of Agriculture only when the agency charged with enforcing those laws, orders or rules finds that the licensee is in violation of them and renders a final order adverse to the licensee.

SECTION 960. ORS 471.432 is amended to read:

471.432. When a person is ordered to undergo assessment and treatment as provided in ORS 471.430, the court shall require the person to do all of the following:

(1) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 471.430.

(2) Complete an examination by an agency or organization designated by the court to determine whether the person has a problem condition involving alcohol as described in ORS 813.040. The designated agencies or organizations must meet the standards set by the Director of [*Human Services*] **the Oregon Health Authority** to perform the diagnostic assessment and treatment of problem drinking and alcoholism and must be certified by the [*Director of Human Services*] **director**.

(3) Complete a treatment program, paid at the expense of the person convicted, as follows:

(a) If the examination required under this section shows that the person has a problem condition involving alcohol, a program for rehabilitation for alcoholism approved by the [*Director of Human Services*] **director**.

(b) If the examination required by this section shows that the person does not have a problem condition involving alcohol, an alcohol information program approved by the [*Director of Human Services*] **director**.

SECTION 961. ORS 471.547 is amended to read:

471.547. The Oregon Liquor Control Commission shall establish an Alcohol Server Education Advisory Committee consisting of persons representing the commission, the Oregon State Police, the Oregon District Attorneys Association, the [*Department of Human Services*] **Oregon Health Authority**, the Department of Transportation, at least one person who is a service permittee under ORS 471.360, a nonprofit organization the purpose of which is to reduce the incidence of drunk driving, and not more than three associations representing retail licensees and two associations representing insurance companies to assist in:

(1) The development of the standards, curriculum and materials for the alcohol server education courses required under ORS 471.542;

(2) The examination required by ORS 471.542, and procedures for administering that examination;

(3) The certification procedures, enforcement policies and penalties for alcohol server education course instructors and providers; and

(4) The development of time requirements for completion of an alcohol server education course and examination and conditions for probationary extension.

SECTION 962. ORS 471.732 is amended to read:

471.732. (1) The Legislative Assembly finds and declares that the regulation of health and sanitation matters in premises licensed by the Oregon Liquor Control Commission under this chapter can best be performed by the [*Department of Human Services*] **Oregon Health Authority** and the State Department of Agriculture.

(2) It is the policy of the Legislative Assembly and the intent of ORS 471.333 and 624.010 and this section that premises licensed by the Oregon Liquor Control Commission under this chapter shall be subject to the laws governing health and sanitation matters, including any applicable licensing requirements, and to the rules adopted thereunder by the [*Department of Human Services and the State Department of Agriculture*] **authority and the department**.

SECTION 963. ORS 475.225 is amended to read:

475.225. (1) The [*Department of Human Services*] **Oregon Health Authority** shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(b) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(c) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) Evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse or abuse of controlled substances;

(e) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(2) The [*department*] **authority** shall encourage research on the medical use, misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of ORS 475.005 to 475.285 and 475.840 to 475.980, it may:

(a) Establish methods to assess accurately the physiological, psychological and social effects of controlled substances and identify their medical uses, relative hazard potential, and potential for abuse;

(b) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of ORS 475.005 to 475.285 and 475.840 to 475.980;

(B) Determine patterns of use, misuse and abuse of controlled substances and the social effects thereof; and

(C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; or

(c) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

(3) The [department] **authority** may enter into contracts for educational and research activities without performance bonds and without regard to ORS 279A.125, 279A.140, 279B.025, 279B.240, 279B.270, 279B.275, 279B.280, 459A.475, 459A.480, 459A.485 and 459A.490.

SECTION 964. ORS 475.302 is amended to read:

475.302. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Authority" means the Oregon Health Authority.

[2] **(3) "Debilitating medical condition" means:**

(a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

or

(c) Any other medical condition or treatment for a medical condition adopted by the [department] **authority** by rule or approved by the [department] **authority** pursuant to a petition submitted pursuant to ORS 475.334.

[3] **(4) "Delivery" has the meaning given that term in ORS 475.005. "Delivery" does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer.**

[4] *"Department" means the Department of Human Services.*

(5) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the [department] **authority**. "Designated primary caregiver" does not include the person's attending physician.

(6) "Marijuana" has the meaning given that term in ORS 475.005.

(7) "Marijuana grow site" means a location where marijuana is produced for use by a registry identification cardholder and that is registered under the provisions of ORS 475.304.

(8) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of the person's debilitating medical condition.

(9) "Production" has the meaning given that term in ORS 475.005.

(10) "Registry identification card" means a document issued by the [department] **authority** that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(11) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(12) "Written documentation" means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records.

SECTION 965. ORS 475.303 is amended to read:

475.303. (1) There is created the Advisory Committee on Medical Marijuana in the [Department of Human Services] **Oregon Health Authority**, consisting of 11 members appointed by the Director of [Human Services] **the Oregon Health Authority**.

(2) The director shall appoint members of the committee from persons who possess registry identification cards, designated primary caregivers of persons who possess registry identification cards and advocates of the Oregon Medical Marijuana Act.

(3) The committee shall advise the director on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program and provide annual input on the fee structure of the program.

(4) The committee shall meet at least four times per year, at times and places specified by the director.

(5) The [department] **authority** shall provide staff support to the committee.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties.

SECTION 966. ORS 475.304 is amended to read:

475.304. (1) The [Department of Human Services] **Oregon Health Authority** shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the [department] **authority** that includes:

(a) The name of the person responsible for the marijuana grow site;

(b) The address of the marijuana grow site;

(c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and

(d) Any other information the [department] **authority** considers necessary.

(2) The [department] **authority** shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

(6)(a) The [department] **authority** shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

SECTION 967. ORS 475.306 is amended to read:

475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition.

(2) A person who is a registry identification cardholder must possess the registry identification card when using or transporting marijuana in a location other than the residence of the cardholder.

(3) The [Department of Human Services] **Oregon Health Authority** shall define by rule when a marijuana plant is mature and when it is immature. The rule shall provide that a plant that has no flowers and that is less than 12 inches in height and less than 12 inches in diameter is a seedling or a start and is not a mature plant.

SECTION 968. ORS 475.309 is amended to read:

475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, is the designated primary caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304; and

(b) The person who has a debilitating medical condition, the person's primary caregiver and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for medical use in amounts allowed under ORS 475.320.

(2) The [Department of Human Services] **Oregon Health Authority** shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the [department] **authority** shall issue a registry identification card to any person who pays a fee in the amount established by the [department] **authority** and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician;

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application; and

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location.

(3) The [department] **authority** shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the [Department of Human Services] **authority**. A county health department that receives the information pursuant to this subsection shall transmit the information to the [Department of Human Services] **authority** within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the [Department of Human Services] **authority**.

(5)(a) The [department] **authority** shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(b) In addition to the authority granted to the [department] **authority** under ORS 475.316 to deny an application, the [department] **authority** may deny an application for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section;

(B) The [department] **authority** determines that the information provided was falsified; or

(C) The applicant has been prohibited by a court order from obtaining a registry identification card.

(c) Denial of a registry identification card shall be considered a final [department] **authority** action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the [department's] **authority's** action.

(d) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the [department] **authority** or a court of competent jurisdiction.

(6)(a) If the [department] **authority** has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(b) of this section is applicable, the [department] **authority** shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

- (C) The name and address of the person's designated primary caregiver, if any;
- (D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and
- (E) Any other information that the [department] **authority** may specify by rule.

(b) When the person to whom the [department] **authority** has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the [department] **authority** shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the [department] **authority** of any change in the person's name, address, attending physician or designated primary caregiver.

(B) If applicable, notify the designated primary caregiver of the cardholder and the person responsible for the marijuana grow site that produces marijuana for the cardholder of any change in status including, but not limited to:

- (i) The assignment of another individual as the designated primary caregiver of the cardholder;
- (ii) The assignment of another individual as the person responsible for a marijuana grow site producing marijuana for the cardholder; or
- (iii) The end of the eligibility of the cardholder to hold a valid registry identification card.

(C) Annually submit to the [department] **authority**:

(i) Updated written documentation from the cardholder's attending physician of the person's debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8)(a) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the person's debilitating medical condition shall return the registry identification card and any other associated Oregon Medical Marijuana Program cards to the [department] **authority** within 30 calendar days of notification of the diagnosis or notification of the contraindication.

(b) If, due to circumstances beyond the control of the registry identification cardholder, a cardholder is unable to obtain a second medical opinion about the cardholder's continuing eligibility to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has expired, the [department] **authority** may grant the cardholder additional time to obtain a second opinion before requiring the cardholder to return the registry identification card and any associated cards.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the [department] **authority** pursuant to subsection (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the [department] **authority**. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

(10) A registry identification cardholder has the primary responsibility of notifying the primary caregiver and person responsible for the marijuana grow site that produces marijuana for the cardholder of any change in status of the cardholder. If the [department] **authority** is notified by the

cardholder that a primary caregiver or person responsible for a marijuana grow site has changed, the [department] **authority** shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at the address of record confirming the change in status and informing the caregiver or person that their card is no longer valid and must be returned to the [department] **authority**.

(11) The [department] **authority** shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the [department] **authority** within seven calendar days of notification of the revocation. If the cardholder is a patient, the patient shall return the patient's card and all other associated Oregon Medical Marijuana Program cards.

(12) The [department] **authority** and employees and agents of the [department] **authority** acting within the course and scope of their employment are immune from any civil liability that might be incurred or imposed for the performance of or failure to perform duties required by this section.

SECTION 969. ORS 475.312 is amended to read:

475.312. (1) If a person who possesses a registry identification card issued pursuant to ORS 475.309 chooses to have a designated primary caregiver, the person must designate the primary caregiver by including the primary caregiver's name and address:

- (a) On the person's application for a registry identification card;
- (b) In the annual updated information required under ORS 475.309; or
- (c) In a written, signed statement submitted to the [Department of Human Services] **Oregon Health Authority**.

(2) A person described in this section may have only one designated primary caregiver at any given time.

SECTION 970. ORS 475.316 is amended to read:

475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:

- (a) Drives under the influence of marijuana as provided in ORS 813.010;
- (b) Engages in the medical use of marijuana in a public place as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);
- (c) Delivers marijuana to any individual who the person knows is not in possession of a registry identification card;
- (d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card;
- (e) Manufactures or produces marijuana at a place other than a marijuana grow site authorized under ORS 475.304; or
- (f) Manufactures or produces marijuana at more than one address.

(2) In addition to any other penalty allowed by law, a person who the [Department of Human Services] **Oregon Health Authority** finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346, may be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the [department] **authority**.

SECTION 971. ORS 475.320 is amended to read:

475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture

or delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:

(a) May produce marijuana for and provide marijuana to a registry identification cardholder or that person's designated primary caregiver as authorized under this section.

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for whom marijuana is being produced.

(c) May produce marijuana for no more than four registry identification cardholders or designated primary caregivers concurrently.

(d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304 for each registry identification cardholder or designated primary caregiver for whom marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the [*Department of Human Services*] **Oregon Health Authority**.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the [*department*] **authority** for each registry identification cardholder for whom the person responsible for the marijuana grow site is producing marijuana.

SECTION 972. ORS 475.331 is amended to read:

475.331. (1)(a) The [*Department of Human Services*] **Oregon Health Authority** shall create and maintain a list of the persons to whom the [*department*] **authority** has issued registry identification cards, the names of any designated primary caregivers and the addresses of authorized marijuana grow sites. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(b) The [*department*] **authority** shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the [*department*] **authority** as necessary to perform official duties of the [*department*] **authority**; and

(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. Prior to being provided identifying information from the list, authorized employees of state or local law enforcement agencies shall provide to the [*department*] **authority** adequate identification, such as a badge number or similar authentication of authority.

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.

SECTION 973. ORS 475.334 is amended to read:

475.334. Any person may submit a petition to the [*Department of Human Services*] **Oregon Health Authority** requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under ORS 475.302. The [*department*] **authority** shall adopt rules establishing the manner in which the [*department*] **authority** will evaluate petitions submitted under this section. Any rules adopted pursuant to this section shall require the [*department*] **authority** to approve or deny a petition within 180 days of receipt of the petition by the [*department*] **authority**. Denial of a petition shall be considered a final [*department*] **authority** action subject to judicial review.

SECTION 974. ORS 475.338 is amended to read:

475.338. The [*Department of Human Services*] **Oregon Health Authority** shall adopt all rules necessary for the implementation and administration of ORS 475.300 to 475.346.

SECTION 975. ORS 475.565 is amended to read:

475.565. (1) In addition to any other penalty provided by law:

(a) A person who violates ORS 475.525 shall incur a civil penalty in an amount of at least \$2,000 and not more than \$10,000; and

(b) The court may order other equitable remedies including but not limited to injunctive relief.

(2) Any fines collected under this section shall be forwarded to the State Treasurer for deposit in the General Fund to the credit of the [*Department of Human Services*] **Oregon Health Authority**. The moneys shall be used for the development and implementation of drug abuse prevention activities and adolescent treatment.

SECTION 976. ORS 476.030 is amended to read:

476.030. (1) The State Fire Marshal shall enforce all statutes, and make rules relating to:

(a) The prevention of fires.

(b) The storage and use of combustibles and explosives.

(c) The maintenance and regulation of structural fire safety features in occupied structures and overseeing the safety of and directing the means and adequacy of exit in case of fire from factories, asylums, hospitals, churches, schools, halls, theaters, amphitheaters, all buildings, except private residences, which are occupied for sleeping purposes, and all other places where large numbers of persons work, live or congregate from time to time for any purpose except that structural changes shall not be required in buildings built, occupied and maintained in conformity with state building code regulations applicable at the time of construction.

(d) Standards for equipment used for fire protection purposes within this state including standard thread for fire hose couplings and hydrant fittings.

(2) The State Fire Marshal and deputies shall have such powers and perform such other duties as are prescribed by law.

(3) If, in the opinion of the State Fire Marshal, a governmental subdivision of the state has enacted adequate regulations generally conforming to state and national standards concerning fire prevention, fire safety measures and building construction requirements for safety, and if the governmental subdivision provides reasonable enforcement of its regulations, the State Fire Marshal may exempt the area subject to such regulation either partially or fully from the statutes, rules and regulations administered by the State Fire Marshal. Prior to adoption of any such exemption, the State Fire Marshal may request from the Department of Public Safety Standards and Training consideration of and recommendations regarding the exemption. The exemption may extend for a two-year period, and may be renewed from time to time, but may be canceled by the State Fire Marshal following 30 days' written notice if the State Fire Marshal finds that the governmental subdivision's regulations or enforcement thereof are not reasonably sufficient. The governmental subdivision shall

furnish a copy of such regulations to the State Fire Marshal and shall file with the State Fire Marshal any amendment thereto within 30 days before the effective date of such amendment. The State Fire Marshal shall designate a person or division within such governmental subdivision as an approved authority for exercising functions relating to fire prevention, fire safety measures and building construction. Upon request of a local official having enforcement responsibility and a showing of unusual fire hazard or other special circumstances, the State Fire Marshal shall make investigation and appropriate recommendations.

(4) The State Fire Marshal may investigate or cause an investigation to be made to determine the probable cause, origin and circumstances of any fire and shall classify such findings as the State Fire Marshal may find appropriate to promote fire protection and prevention.

(5) The State Fire Marshal shall provide training in fire safety inspection to the Department of Human Services, area agencies[, *community mental health and developmental disabilities programs*], **the Oregon Health Authority, community mental health programs, developmental disabilities programs** and [to] designees of the Long Term Care Ombudsman. If an adult foster home has been inspected by the Department of Human Services, **the Oregon Health Authority, an area agency, a community mental health program or a developmental disabilities program** [, *an area agency or community mental health and developmental disabilities program*] and the agency conducting the inspection reasonably believes that the adult foster home is not in compliance with applicable fire safety rules, the agency conducting the inspection may request the State Fire Marshal to inspect or cause an inspection to be made. If a designee of the Long Term Care Ombudsman, in the course of visiting an adult foster home, believes that the adult foster home is not in compliance with applicable fire safety rules, the designee shall report the problem to the appropriate agency to request a fire safety inspection by the office of the State Fire Marshal or by a designated representative of the office of the State Fire Marshal.

(6) Upon the request of the Department of Human Services, **the Oregon Health Authority, an area agency, a community mental health program or a developmental disabilities program**, [*an area agency or community mental health and developmental disabilities program*,] the State Fire Marshal shall inspect or cause an inspection to be made to determine if the adult foster home is in compliance with rules jointly adopted by the Department of Human Services and the State Fire Marshal establishing fire safety standards for adult foster homes.

(7) As used in subsections (5) and (6) of this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705.

(b) "Area agency" has the meaning given that term in ORS 410.040.

[(c) "*Community mental health and developmental disabilities program*" means a program established under ORS 430.620.]

(c) "**Community mental health program**" means a program established under ORS 430.620 (1)(b).

(d) "**Developmental disabilities program**" means a program established under ORS 430.620 (1)(a).

SECTION 977. ORS 478.260 is amended to read:

478.260. (1) The district board shall select a fire chief qualified by actual experience as a fire-fighter and fire precautionist, or otherwise, and assistants, volunteer or otherwise, and fix their compensation. The fire chief shall be responsible for the equipment and properties of the district. Under the direction of the board, the fire chief shall be responsible for the conduct of the **fire** department.

(2) The board, with advice and counsel of the fire chief, shall select the location of the fire house or houses or headquarters of the fire department of the district. Such sites shall be chosen with a view to the best service to the residents and properties of the whole district and may be acquired by purchase or exercise of the powers of eminent domain in the manner provided by ORS chapter 35. The board may purchase apparatus and equipment as needed by the district, and provide a water system, ponds or reservoirs for the storage of water for fire-fighting purposes. Or the board may contract with water companies or districts, or both, for water service and facilities at a rate

of compensation mutually agreed upon. The board also may divide the district into zones or subdivisions and provide an adequate system or code of fire alarms or signals by telephone, bell, whistle, siren or other means of communication.

(3) A district may operate or acquire and operate, or contract for the operation of, emergency medical service equipment and vehicles both within and without the boundaries of the district. A district may conduct ambulance operations only in conformance with a county plan adopted under ORS 682.062 for ambulance services and ambulance service areas and with rules of the [*Department of Human Services*] **Oregon Health Authority** relating to such services and service areas. Service authorized under a county plan includes authorization for a district to provide ambulance services by intergovernmental agreement with any other unit of local government designated by the plan to provide ambulance services.

(4) As used in this section, "ambulance services" has the meaning given that term in ORS 682.027.

SECTION 978. ORS 479.215 is amended to read:

479.215. (1) Except as provided in subsection (3) of this section or in ORS 479.217, the Department of Human Services [*shall*] **or the Oregon Health Authority may** not issue an initial license or an initial certificate of approval to any institution when the State Fire Marshal, or an approved representative as provided in subsection (3) of this section, notifies in writing that the institution is not in substantial compliance with all applicable laws and rules relating to safety from fire established pursuant to ORS 476.030.

(2) On January 1st of each year or as soon thereafter as practicable, the department **and the authority** shall furnish the State Fire Marshal with a complete list of all institutions licensed or approved by [*it*] **the department or the authority** within the State of Oregon.

(3) The State Fire Marshal, deputy or the approved authority shall make or have made at least once each year an inspection of any such licensed or approved institution to determine its substantial compliance with the laws and rules as provided in subsection (1) of this section. If any required corrective measures are not completed within the reasonable time fixed or an extension thereof made by order of the inspecting authority, the department **or the Oregon Health Authority** shall be notified of the fact of noncompliance and appropriate action shall be initiated in accordance with provisions of ORS 476.030 and 479.170. Except as provided in ORS 479.217, if, at any time, the State Fire Marshal, or deputy, or the approved authority notifies the department **or the Oregon Health Authority** in writing that an institution is not in substantial compliance with all applicable laws and rules as provided in subsection (1) of this section, the [*department*] **licensing agency** shall deny, withhold, suspend or revoke the license or certificate of approval of the institution.

(4) When an area has been exempted by the State Fire Marshal under ORS 476.030, certification, annual inspection and notification of noncompliance when appropriate, shall be made and performed by the approved authority of the governmental subdivision having jurisdiction in such area.

SECTION 979. ORS 479.217 is amended to read:

479.217. (1) In lieu of an inspection approval by the State Fire Marshal or the approved authority of a governmental subdivision having jurisdiction in an area exempted by the State Fire Marshal, under ORS 479.215 for institutions licensed under ORS 412.001 to 412.161, 418.005 to 418.025, 418.205 to 418.315, 418.625 to 418.685, 418.647, 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, [*and*] 442.400 to 442.463 or [*licensed by the Department of Human Services in accordance with ORS*] 443.400 to 443.455, the State Fire Marshal or the approved authority may issue a temporary permit which meets the requirements of ORS 479.215 for licensing of such institutions. The temporary permit may be issued only when it appears that:

(a) The facilities for protection from fire in an institution are adequate so that the institution can operate without jeopardizing the health or safety of its residents or patients; and

(b) The institution can comply with all applicable laws and rules relating to safety from fire within a period of two years from the date of issuance of the temporary permit.

(2) In issuing the temporary permit, the State Fire Marshal or approved authority of the governmental subdivision having jurisdiction in an exempt area may require that during the two-year period in which the temporary permit is in effect:

(a) Plans for compliance with all applicable laws and rules relating to safety from fire be submitted with the application for a temporary permit;

(b) Periodic reports be submitted on the progress of the plans for compliance; and

(c) Special temporary provisions specified by the State Fire Marshal or the approved authority be maintained for the protection from fire of the residents or patients of the institution.

(3) If at any time, the State Fire Marshal or the approved authority determines that the facilities for protection from fire at the institution are no longer adequate to protect the residents or patients or that the requirements imposed under subsection (2) of this section are not being maintained, the State Fire Marshal or the approved authority shall cancel the temporary permit and shall notify the [Department of Human Services] **licensing agency** of such cancellation.

(4) Extensions and renewals may be granted on the temporary permit.

SECTION 980. ORS 479.220 is amended to read:

479.220. When application is made for the initial issuance or reinstatement of a license or certificate of approval to operate and maintain an institution, or for an enlargement or addition to a licensed or approved institution, the [Department of Human Services] **licensing agency** shall notify in writing the State Fire Marshal, and the State Fire Marshal or deputy, or the approved authority in the case of an institution located in an area exempted under ORS 476.030, shall within 30 days inspect the institution as authorized by ORS 476.150 and within that time shall notify the [department] **licensing agency** in writing when the institution is not substantially in compliance with all applicable laws and rules.

SECTION 981. ORS 480.225 is amended to read:

480.225. (1) A person is eligible for a certificate of possession under ORS 480.235 if:

(a) The person has not been convicted, or found guilty except for insanity under ORS 161.295, of a misdemeanor involving violence, as defined in ORS 166.470, within the previous four years. A person who has been so convicted is eligible under this subsection following the expiration of seven years after the date of final and unconditional discharge from all imprisonment, probation and parole resulting from the conviction.

(b) The person has not been convicted, or found guilty except for insanity under ORS 161.295, of, and is not under indictment for, any felony.

(c) The person is not a fugitive from justice, has no outstanding warrants for arrest and is not free on any form of pretrial release for any offenses listed in paragraphs (a) and (b) of this subsection.

(d) The person has not been determined to be mentally ill under ORS 426.130 and 430.397 to 430.401 or mentally retarded under ORS 427.290. A person who previously has been so determined is eligible under this subsection if, at the time of application for such a certificate, the person produces a certified copy of a full discharge from the proper state hospital. The [Department of Human Services] **Oregon Health Authority** shall provide the State Fire Marshal with direct electronic access to the [department's] **authority's** database of information identifying persons meeting the criteria of this section who were committed or subject to an order under ORS 426.130. The State Fire Marshal and the [Department of Human Services] **authority** shall enter into an agreement describing the access to information under this subsection.

(e) The person is at least 21 years of age.

(f) The person does not use a fictitious name or make a material misrepresentation in application for such a certificate.

(g)(A) The person has not been convicted of, and is not under indictment for, a criminal offense involving a controlled substance as defined in ORS 475.005, other than the offense of driving under the influence of intoxicants.

(B) Notwithstanding subparagraph (A) of this paragraph, a person who has had a certificate denied or revoked due to conviction of a criminal offense involving a controlled substance is eligible

under this section following the expiration of seven years after the date of final and unconditional discharge from all imprisonment, probation and parole resulting from the conviction.

(h) The person has been discharged from the jurisdiction of the juvenile court for more than four years for an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470.

(i) The person is not the subject of a restraining order that alleges the person's possession of explosives presents a credible threat to another person.

(j) The person has passed an examination administered by the State Fire Marshal that assesses the person's knowledge of safety in the transportation and storage of explosives as required under federal and state laws and regulations pertaining to explosives. The State Fire Marshal shall examine each applicant prior to issuance of a certificate of possession to the applicant. The State Fire Marshal may by rule establish and collect an examination fee in an amount necessary to cover the cost of administering the examination.

(k) The person certifies on the application for a certificate of possession that all explosives in the person's possession will be used, stored and transported in accordance with federal, state and local requirements.

(L) The person certifies that all explosives will be possessed, used, stored and transported in accordance with federal, state and local requirements.

(2) Subsection (1)(a) and (b) of this section does not apply to a conviction or indictment that has been expunged from a person's record under the laws of this state or equivalent laws of another jurisdiction.

SECTION 982. ORS 497.162 is amended to read:

497.162. (1) Upon application of the Oregon Youth Authority, **the Oregon Health Authority** or the Department of Human Services, the State Fish and Wildlife Commission shall issue, without fee, a license to angle for the temporary use of any person in a state institution as *[defined]* **described** in ORS 179.610, any student in a youth correction facility or related camps or programs operated by the Oregon Youth Authority, any child placed by the department and under the care of a foster home or a private nonprofit child-caring agency certified by the department, or any person in *[a department alternatives]* **an alternative** to state hospitalization program as *[defined]* **described** in ORS 430.630 (2)(b) or (c). The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to angling, shall be used as the *[authority or department]* **agency applying for the license** directs.

(2) Upon application of the Department of Human Services, the commission shall issue, without fee, a license to take shellfish for the temporary use of any child placed by the department and under the care of a foster home or a private nonprofit child-caring agency certified by the department. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to taking shellfish, shall be used as the department directs.

(3) Upon application of the director of any veteran's administration hospital or domiciliary within this state, the commission shall issue, without fee, to each hospital or domiciliary 30 licenses to angle or to take shellfish for the temporary use of any person who is a patient or resident in the hospital or domiciliary. The licenses issued under this subsection shall be in bearer form and, subject to applicable laws and regulations relating to angling and to taking shellfish, shall be used as the director of the hospital or domiciliary provides.

SECTION 983. ORS 527.710 is amended to read:

527.710. (1) In carrying out the purposes of ORS 527.610 to 527.770, 527.990 (1) and 527.992, the State Board of Forestry shall adopt, in accordance with applicable provisions of ORS chapter 183, rules to be administered by the State Forester establishing standards for forest practices in each region or subregion.

(2) The rules shall ensure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

(a) Air quality;

- (b) Water resources, including but not limited to sources of domestic drinking water;
- (c) Soil productivity; and
- (d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the inventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS chapters 468A and 468B and ORS 477.013 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat improvement tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060, 315.134 and ORS chapters 496, 498, 501, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.480 to 358.545, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.989 and 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill, natural heritage conservation and natural heritage conservation tax incentive programs administered by the State Land Board and the Department of State Lands under ORS 196.800 to 196.900 and 273.553 to 273.591;

(g) Federal Safe Drinking Water Act programs administered by the [Department of Human Services] **Oregon Health Authority** under ORS 448.273 to 448.990;

(h) Natural heritage conservation programs administered by the Natural Heritage Advisory Council under ORS 273.553 to 273.591;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308A.300 to 308A.330;

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540; and

(k) Pesticide control programs administered by the State Department of Agriculture under ORS chapter 634.

(5) In carrying out the provisions of subsection (4) of this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forestland and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7)(a) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630.

(b) The State Forestry Department shall enter into agreements with appropriate state agencies for joint monitoring of the effectiveness of forest practice rules in protecting forest resources and water quality.

(8) If, based upon the study completed pursuant to section 15 (2)(f), chapter 919, Oregon Laws 1991, the board determines that additional rules are necessary to protect forest resources pursuant to ORS 527.630, the board shall adopt forest practice rules that reduce to the degree practicable the adverse impacts of cumulative effects of forest practices on air and water quality, soil productivity, fish and wildlife resources and watersheds. Such rules shall include a process for determining areas where adverse impacts from cumulative effects have occurred or are likely to occur, and may require that a written plan be submitted for harvests in such areas.

(9)(a) The State Forester, in cooperation with the State Department of Fish and Wildlife, shall identify streams for which restoration of habitat would be environmentally beneficial. The State Forester shall select as a priority those streams where restoration efforts will provide the greatest benefits to fish and wildlife, and to streambank and streambed stability.

(b) For those streams identified in paragraph (a) of this subsection, the State Forester shall encourage landowners to enter into cooperative agreements with appropriate state agencies for conduct of restoration activities.

(c) The board, in consultation with appropriate state agencies, shall study and identify methods for restoring or enhancing fish and wildlife populations through restoration and rehabilitation of sites beneficial to fish and wildlife.

(d) The board shall adopt rules to implement the findings of this subsection.

(10) In addition to its responsibilities under subsections (1) to (3) of this section, the board shall adopt rules to reduce the risk of serious bodily injury or death caused by a rapidly moving landslide directly related to forest practices. The rules shall consider the exposure of the public to these safety risks and shall include appropriate practices designed to reduce the occurrence, timing or effects of rapidly moving landslides. As used in this subsection, "rapidly moving landslide" has the meaning given that term in ORS 195.250.

SECTION 984. ORS 537.532 is amended to read:

537.532. (1) Notwithstanding any other provision of law, the injection into aquifers of water that complies with drinking water standards established by the [*Department of Human Services*] **Oregon Health Authority** under ORS 448.273 under an aquifer storage and recovery limited license or permit:

(a) Shall not be considered a waste, contaminant or pollutant;

(b) Shall be exempt from the requirement to obtain a discharge permit under ORS 468B.050 or 468B.053 or a concentration limit variance from the Department of Environmental Quality;

(c) Shall comply with all other applicable local, state or federal laws; and

(d) May be located within or outside an urban growth boundary in conformance with land use laws.

(2) In order to continue to protect the high quality of Oregon's aquifers for present and future uses, the Legislative Assembly recognizes the need to minimize concentrations of constituents in the injection source water that are not naturally present in the aquifer. Each aquifer storage and recovery limited license or permit shall include conditions to minimize, to the extent technically feasible, practical and cost-effective, the concentration of constituents in the injection source water that are not naturally present in the aquifer. In no case may an aquifer storage and recovery limited license or permit establish concentration limits for water to be injected in excess of the standards established by the [*Department of Human Services*] **authority** under ORS 448.273 or the maximum

measurable levels established by the Environmental Quality Commission under ORS 468B.165, whichever are more stringent.

(3) Except as otherwise provided, if the injection source water contains constituents regulated under ORS 448.273 or 468B.165 that are detected at greater than 50 percent of the established levels, the aquifer storage and recovery limited license or permit may require the permittee to employ, or continue the employment of, technically feasible, practical and cost-effective methods to minimize concentrations of such constituents in the injection source water. Constituents that have a secondary maximum contaminant level or constituents that are associated with disinfection of the water may be injected into the aquifer up to the standards established under ORS 448.273.

(4) The Water Resources Department may, based upon valid scientific data, further limit certain constituents in the injection source water if the department finds the constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses.

SECTION 985. ORS 537.534 is amended to read:

537.534. (1) In accordance with this section, the Water Resources Commission shall establish rules for the permitting and administration of aquifer storage and recovery projects. The rules shall establish the Water Resources Department as the sole permitting agency for the projects, but the Department of Environmental Quality and the [Department of Human Services] **Oregon Health Authority** may comment on permits for a project and recommend conditions to be included on the permit. When necessary, the applicant also shall obtain land use and development approval from a local government.

(2) Notwithstanding the provisions of ORS 537.130, the Water Resources Commission shall establish by rule a procedure to allow a person to obtain a limited license to store and use water injected into an underground aquifer for aquifer storage and recovery testing purposes for a short term or fixed duration after the person complies with the notice provision set forth in ORS 537.144. The rules shall provide a 30-day public comment period before issuance of a limited license. The Water Resources Department may attach conditions to the limited license regarding monitoring, sampling and rates of recovery up to 100 percent of the injection quantity. Aquifer storage and recovery under a limited license may be conditioned by the Water Resources Department to protect existing ground water rights that rely upon the receiving aquifer and the injection source water. The Water Resources Department may revoke or modify the limited license to use the stored water acquired under a limited license if that use causes injury to any other water right or to a minimum perennial streamflow. The Water Resources Director may issue a limited license for aquifer storage and recovery purposes for a term of not more than five years. The license may be renewed if the applicant demonstrates further testing is necessary.

(3) To obtain a limited license for aquifer storage and recovery, the applicant shall provide to the Water Resources Department:

- (a) Well construction information;
- (b) Test results of the quality of the injection source water;
- (c) Test results of the quality of the receiving aquifer water;
- (d) The proposed injected water storage time, recovery rates and recovery schedule;
- (e) Preliminary hydrogeologic information including a description of the aquifer, estimated flow direction and rate of movement, allocation of surface water, springs or wells within the area affected by aquifer storage and recovery wells;
- (f) The fee established by rule by the commission pursuant to ORS 536.050 (1)(L); and
- (g) Any other information required by rule of the commission.

(4) Only after completion of a test program under a limited license issued under subsection (3) of this section may the applicant apply for a permanent aquifer storage and recovery permit. Each application for an aquifer storage and recovery permit shall be accompanied by the fee set forth in ORS 536.050 for examination of an application for a permit to store water. The Water Resources Department shall be the sole permitting agency for the project and may place conditions on the permit consistent with rules adopted by the commission, but the Department of Environmental

Quality and the [Department of Human Services] **Oregon Health Authority** may review, comment on and recommend conditions to be included on the permit. When necessary, the applicant shall obtain land use and development approval from a local government. Where existing water rights for the injection source water have been issued, the Water Resources Department shall receive comments from interested parties or agencies, but the public interest review standards shall apply only to the matters raised by the aquifer storage and recovery permit application in the same manner as any new water right application, not to the underlying water rights. If new water rights for injection source water and aquifer storage and recovery are necessary, then the public interest review standards shall apply to the new permit application in the same manner as any new water right application. The Water Resources Director may refer policy matters to the commission for decision.

(5) The commission shall adopt rules consistent with this section to implement an aquifer storage and recovery program. The rules shall include:

(a) Requirements for reporting and monitoring the aquifer storage and recovery project aquifer impacts and for constituents reasonably expected to be found in the injection source water.

(b) Provisions that allow any person operating an aquifer storage and recovery project under a permit, upon approval by the Water Resources Department, to recover up to 100 percent of the water stored in the aquifer storage facility if valid scientific data gathered during operations under the limited license or permit demonstrate that the injected source water is not lost through migration or other means and that ground water otherwise present in the aquifer has not been irretrievably lost as a result of aquifer storage or retrieval. The Water Resources Department may place such other conditions on withdrawal of stored water necessary to protect the public health and environment, including conditions allowing reconsideration of the permit to comply with ORS 537.532.

(c) The procedure for allowing the Department of Environmental Quality and the [Department of Human Services] **Oregon Health Authority** to comment on and recommend permit conditions.

(6) The use of water under a permit as injection source water for an aquifer storage and recovery project up to the limits allowed in subsection (5)(b) of this section shall not affect the priority date of the water right permit or otherwise affect the right evidenced by the permit.

(7) The holder of a permit for aquifer storage and recovery shall apply for a transfer or change of use if the use of recovered water is different from that which is allowed in the source water permit or certificate.

SECTION 986. ORS 541.845 is amended to read:

541.845. (1) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Commission may adopt rules necessary to carry out ORS 541.700 to 541.855.

(2) In adopting rules establishing guidelines or criteria for awarding loans or grants for drinking water projects, the commission shall coordinate the Water Resources Department's rulemaking process with the Economic and Community Development Department and the [Department of Human Services] **Oregon Health Authority** in order to ensure that rules adopted under this subsection are consistent with rules adopted under ORS 285B.563 and 431.120. The rules adopted under this subsection shall:

(a) Require the installation of meters on all new active service connections from any municipal drinking water distribution lines funded under ORS 285B.560 to 285B.599, 431.120, 541.700, 541.705, 541.755, 541.765, 541.830 and 541.845; and

(b) Require a plan, to be adopted by the municipality, for installation of meters on all service connections throughout the drinking water system.

(3) As used in this section, "service connection" does not include fire hydrants, fire sprinkler system connections, line blow-offs and drains, standby emergency interties, valve controlled drinking fountains and other similar intermittently used connections.

SECTION 987. ORS 545.101 is amended to read:

545.101. (1) When a subdivision is platted after September 13, 1975, under ORS 92.010 to 92.190, if the subdivision has three or more tracts on each acre of land within the subdivision, the subdivision shall be excluded and taken from the district pursuant to ORS 545.097 to 545.126 at the time that the plat is approved by the appropriate governing body.

(2) The exclusion provided in subsection (1) of this section shall not apply to a district which:

(a) Also supplies domestic water approved by the [*Department of Human Services*] **Oregon Health Authority** to the subdivision; or

(b) Agrees to supply water to the subdivision. A district may require as a condition of any agreement that:

(A) The subdivider install underground pipe from the district's designated point of delivery to each lot or parcel in the subdivision as shown on the plat approved by the appropriate governing body;

(B) The subdivider install a meter or other adequate measuring device at the delivery point to the subdivision and for each lot or parcel;

(C) The subdivider provide adequate easements for the delivery system and make provision for the maintenance and repair of the delivery system; and

(D) The subdivider provide any other measures that the district considers necessary for the proper and efficient delivery of water to the subdivision and for the efficient administration of such delivery.

(3) Nothing in subsection (2)(b) of this section requires a district to agree to deliver water to a subdivision.

SECTION 988. ORS 547.045 is amended to read:

547.045. (1) Whenever any diking or drainage district is sought to be created and organized or is created and organized in the manner provided by law, within the boundaries of which are located any lands belonging to the state that have been acquired or used by or for any state institution described in ORS 179.321, the Director of Human Services **or the Director of the Oregon Health Authority** may sign any petition or objections thereto for the organization of such district and exercise on behalf of the state with respect to the district and the land therein belonging to the state, all the rights and privileges of a landowner within the district.

(2) Whenever any such district or proposed district includes any lands belonging to any public body as defined in ORS 174.109, the presiding officer of such public body, or other member of the governing body of such public body, when thereto authorized by a resolution of the governing body thereof, may sign such petition or objection thereto on behalf of the public body, and exercise with respect to the district and the land therein belonging to the public body, all the rights and privileges of a landowner in the district, including the right to be a supervisor of the district.

(3) Lands belonging to a public body as defined in ORS 174.109 shall be subject to the same burdens and liabilities and entitled to the same benefits as lands in the district belonging to private individuals. The Department of Human Services **or the Oregon Health Authority** may pay from any appropriations made for the operation and maintenance of any institution, the lands of which have been included in any diking or drainage district, any charges billed to the department or any assessments levied against such lands by the diking or drainage district.

SECTION 989. ORS 561.740 is amended to read:

561.740. (1) The Director of Agriculture and an appointee of the [*Director of Human Services*] **Director of the Oregon Health Authority** who has experience in health program administration may enter into memoranda of understanding or other intergovernmental agreements on behalf of this state for the purpose of furthering collaboration between this state and federal agencies that regulate the growing of biopharmaceutical crops. A memorandum or other agreement entered into under this section shall be designed to increase state input to the federal biopharm permitting system on biopharmaceutical crop issues and requirements of specific interest to this state.

(2) To the extent authorized under federal and state law, or under any memorandum of understanding or other agreement entered into under subsection (1) of this section, the Director of Agriculture and the appointee of the Director of [*Human Services*] **the Oregon Health Authority**, or their designees:

(a) Notwithstanding ORS 192.410 to 192.505, shall refuse to disclose any biopharm permit application or related biopharmaceutical crop information received from the United States Department of Agriculture's Animal and Plant Health Inspection Service, or from any successor to that service,

that the United States Department of Agriculture has determined to be confidential business information.

(b) May review biopharm permit applications and biopharmaceutical crop information submitted to the United States Department of Agriculture.

(c) May administer and conduct site inspections and monitoring of any biopharmaceutical crops grown in Oregon.

(d) If there is evidence that biopharmaceutical crops are endangering Oregon agriculture, horticulture or forest production or public health, may take appropriate enforcement action.

(e) May charge a biopharm permit applicant or holder fees for state oversight, services or activities under this section. Fees charged under this paragraph may not total more than \$10,000 and must be reasonably calculated to reimburse the state for the actual cost of the oversight, services or activities. Fees collected under this paragraph shall be deposited to the credit of the Department of Agriculture Service Fund and are continuously appropriated to the State Department of Agriculture for the purpose of carrying out this section.

SECTION 990. ORS 609.652 is amended to read:

609.652. As used in ORS 609.654:

(1)(a) "Aggravated animal abuse" means any animal abuse as described in ORS 167.322.

(b) "Aggravated animal abuse" does not include:

(A) Good animal husbandry, as defined in ORS 167.310; or

(B) Any exemption listed in ORS 167.335.

(2) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) A law enforcement division of a county or municipal animal control agency that employs sworn officers.

(3) "Public or private official" means:

(a) A physician, including any intern or resident.

(b) A dentist.

(c) A school employee.

(d) A licensed practical nurse or registered nurse.

(e) An employee of the Department of Human Services, **Oregon Health Authority**, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health [and] **program, a community** developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) A peace officer.

(g) A psychologist.

(h) A member of the clergy.

(i) A licensed clinical social worker.

(j) An optometrist.

(k) A chiropractor.

(L) A certified provider of foster care, or an employee thereof.

(m) An attorney.

(n) A naturopathic physician.

(o) A licensed professional counselor.

(p) A licensed marriage and family therapist.

(q) A firefighter or emergency medical technician.

(r) A court appointed special advocate, as defined in ORS 419A.004.

(s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

(t) A member of the Legislative Assembly.

SECTION 991. ORS 616.010 is amended to read:

616.010. The duty of administration and enforcement of all regulatory legislation applying to:

(1) The production, processing and distribution of all food products or commodities of agricultural origin shall, in addition to such further legislation as shall specifically name the State Department of Agriculture as the administering agency, be performed by the department to the exclusion of any other department not so specifically named.

(2) The sanitation of establishments where food or drink is consumed on the premises where sold, or to sanitary practices used in such establishments, shall be performed by the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 992. ORS 616.015 is amended to read:

616.015. In order to more effectively utilize the agencies of the state in the public interest and without unnecessary duplication and expense, the relationship between the production, processing and distribution of food and the public health hereby is recognized. Therefore there shall be the fullest cooperation between the [*Department of Human Services*] **Oregon Health Authority** and the State Department of Agriculture.

SECTION 993. ORS 616.020 is amended to read:

616.020. (1) In addition to any [*Department of Human Services*] **Oregon Health Authority** survey, investigation or inquiry authorized by law that involves the production, processing or distribution of agricultural products, the [*Department of Human Services*] **authority** shall make such further surveys, investigations or inquiries as may be requested by the Director of Agriculture for the purpose of showing the manner in which the production, processing or distribution of agricultural products may affect the public health.

(2) In order that maximum protection to the public health may result from the activities of the [*Department of Human Services*] **authority** and the State Department of Agriculture, the [*Department of Human Services*] **authority** shall notify the Director of Agriculture in writing of any contemplated survey that affects or may affect agricultural products that are under the regulation of the [*State Department of Agriculture*] **department**. The notice shall cover in detail the scope of the survey under consideration, and the reasons therefor. However, this section shall not be construed as prohibiting the [*Department of Human Services*] **authority** from taking immediate action in any case where such action seems necessary in the interests of public health. The written notice is not required in the case of a survey instituted on the request of the Director of Agriculture.

(3) Not less than 30 days after the completion of any such survey, the [*Department of Human Services*] **authority** shall file with the Director of Agriculture a certified copy of its report. The report shall include the findings of the [*Department of Human Services*] **authority** with respect to all matters covered thereby. Whenever the findings in the report of any survey, investigation or inquiry made by the [*Department of Human Services*] **authority** show any hazard to public health existing incident to the production, processing or distribution of any agricultural commodity, the State Department of Agriculture shall take such action as may be necessary and within the scope of its resources to remove such hazards.

SECTION 994. ORS 616.077 is amended to read:

616.077. (1) The [*Department of Human Services*] **Oregon Health Authority** shall adopt any rules necessary to implement the policy established in ORS 616.073.

(2) Rules adopted by the [*Department of Human Services*] **authority** under subsection (1) of this section to implement the policy of the State of Oregon to prohibit the use of sulfites in fresh foods and foods to be consumed without cooking do not apply to a food processing establishment licensed under ORS 616.695 to 616.755.

SECTION 995. ORS 616.330 is amended to read:

616.330. ORS 616.205 to 616.215, 616.225 to 616.256, 616.286, 616.295, 616.310, 616.315, 616.325, 616.341, 616.350 to 616.366, 616.790, 616.992, rules adopted by the [*Department of Human Services*] **Oregon Health Authority** under ORS 616.077 (1) and this section do not apply to alcoholic beverages.

SECTION 996. ORS 616.711 is amended to read:

616.711. (1) No license or duplicate of a license, as prescribed in ORS 616.706, is necessary for food establishments where the principal activity is the receiving, storage, sorting, cleaning and packing of fresh fruits and vegetables.

(2) All provisions of ORS 616.695 to 616.755 other than licensing apply to food establishments set forth in subsection (1) of this section.

(3) The provisions of ORS 616.695 to 616.755 do not apply to:

(a) Restaurants, bed and breakfast facilities, commissaries, vending machines and mobile food and beverage units licensed under ORS 624.010 to 624.121, 624.310 to 624.430 or those which are exempted under ORS 624.330.

(b) Food service facilities not preparing food for distribution to the public or to institutional facilities licensed and regulated by the Department of Human Services **or the Oregon Health Authority**.

(c) Shellfish operations licensed under ORS chapter 622.

(d) A person processing, manufacturing or packaging food for family use or consumption.

(e) Commercial transit salvage operations not involving sale of food to the general public.

SECTION 997. ORS 616.745 is amended to read:

616.745. (1) The [*Department of Human Services*] **Oregon Health Authority** may, by rule, define certain communicable diseases which may be spread to the public through the handling of food in food establishments.

(2) No owner or employer shall require, permit or suffer any person to work, nor shall any person work, in a food establishment who is affected with a disease described in subsection (1) of this section.

SECTION 998. ORS 619.095 is amended to read:

619.095. (1) Game meat donated to charitable organizations shall be inspected by the State Department of Agriculture to determine fitness for human consumption as provided in ORS 603.045 and 619.031 or shall be inspected and determined fit for human consumption by employees of the State Department of Fish and Wildlife or the Department of State Police who have been trained by the State Department of Agriculture in the procedures provided in ORS 603.045 and 619.031, and shall be processed by an establishment approved by the State Department of Agriculture as provided in ORS 619.026 and 619.031 and may be served for human consumption by charitable organizations.

(2) As used in subsection (1) of this section:

(a) "Charitable organization" means the Department of Human Services, **Oregon Health Authority**, Oregon Youth Authority, Department of Corrections institutions, low-income nutritional centers, public school nutritional centers, senior nutritional centers, state hospitals and other charitable organizations or public institutions approved by the State Department of Fish and Wildlife.

(b) "Game meat" includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

SECTION 999. ORS 624.010 is amended to read:

624.010. As used in ORS 624.010 to 624.121, unless the context requires otherwise:

(1) "Authority" means the Oregon Health Authority.

[(1)] **(2) "Bed and breakfast facility" means any establishment located in a structure designed for a single family residence and structures appurtenant thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, that:**

(a) Has more than two rooms for rent on a daily basis to the public; and

(b) Offers a breakfast meal as part of the cost of the room.

[(2)] *"Department" means the Department of Human Services.*

(3) "Director" means the Director of [*Human Services*] **the Oregon Health Authority**.

(4) "Limited service restaurant" means a restaurant serving only individually portioned pre-packaged foods prepared from an approved source by a commercial processor and nonperishable beverages.

(5) "Restaurant" includes any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or

quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants.

(6) "Temporary restaurant" means any establishment operating temporarily in connection with any fair, carnival, circus or similar public gathering or entertainment, food product promotion or any other event where food is prepared or served for consumption by the public. "Temporary restaurant" does not include:

(a) An establishment where food is prepared and served by a fraternal, social or religious organization only to its own members and guests.

(b) An approved school lunchroom where food is prepared and served for school and community activities, where the preparation and service are under the direction of the school lunchroom supervisor.

(c) A food product promotion where only samples of a food or foods are offered to demonstrate the characteristics of the food product. For the purposes of this paragraph, a sample shall not include a meal, an individual hot dish or a whole sandwich.

(d) A private residence, or part thereof, including the grounds, areas and facilities held out for the use of the occupants generally, for which a temporary sales license is issued under ORS 471.190 for a period not exceeding one day.

SECTION 1000. ORS 624.020 is amended to read:

624.020. (1) A person may not operate a restaurant or bed and breakfast facility without a license to do so from the [*Department of Human Services*] **Oregon Health Authority**.

(2) Application for the license shall be in writing in the form prescribed by the [*department*] **authority** and shall contain the name and address of the applicant and any other information that the [*department*] **authority** may require. The fee for a license is as provided in ORS 624.490. A license expires annually on December 31 or on such date as may be specified by [*department*] **authority** rule.

(3) The Director of [*Human Services*] **the Oregon Health Authority** may suspend, deny or revoke any license for violation of any of the applicable provisions of ORS 624.010 to 624.121 or any rule adopted under ORS 624.010 to 624.121.

(4) Procedures for denial, revocation or suspension of a license are as provided in ORS chapter 183.

(5) The licensee shall post evidence of the license in public view at the customary entrance of the restaurant or bed and breakfast facility. A person other than the director may not deface or remove evidence of a license.

(6) A license is not transferable. The [*department*] **authority** may not issue a refund representing any unused portion of a license.

SECTION 1001. ORS 624.036 is amended to read:

624.036. When the [*Department of Human Services*] **Oregon Health Authority** determines that public health hazards are nonexistent, the [*department*] **authority** may, by rule, exempt certain types of confection operations from the license requirements of ORS 624.010 to 624.121.

SECTION 1002. ORS 624.041 is amended to read:

624.041. The [*Department of Human Services*] **Oregon Health Authority** shall make all rules necessary for the enforcement of ORS 624.010 to 624.121, including such rules concerning the construction and operation of restaurants, bed and breakfast facilities and temporary restaurants as are reasonably necessary to protect the public health of persons using these facilities. The rules shall provide for, but need not be restricted to, the following:

(1) A water supply adequate in quantity and safe for human consumption.

(2) Disposal of sewage, refuse and other wastes in a manner that will not create a nuisance or a health hazard.

(3) The cleanliness and accessibility of toilets and handwashing facilities.

(4) The cleanliness of the premises.

- (5) The refrigeration of perishable foods.
- (6) The storage of food for protection against dust, dirt and contamination.
- (7) Equipment of proper construction and cleanliness of such equipment.
- (8) The control of insects and rodents.
- (9) The cleanliness and grooming of food workers.
- (10) Exclusion of unauthorized persons from food preparation and storage areas.
- (11) Review of proposed plans for the construction or remodeling of facilities subject to licensing under this chapter.

SECTION 1003. ORS 624.046 is amended to read:

624.046. The [Department of Human Services] **Oregon Health Authority** shall allow a bed and breakfast facility to conduct food service operations for its patrons in rooms used by the owner or operator, provided that:

- (1) Such rooms are not used as sleeping quarters; and
- (2) Persons not employed by the facility shall be excluded from such rooms during breakfast meal hours.

SECTION 1004. ORS 624.051 is amended to read:

624.051. The [Department of Human Services] **Oregon Health Authority** shall allow restaurants with an occupancy capacity of no more than 15 persons, including employees and patrons, to have only one toilet fixture and adjacent lavatory on the premises. This single toilet fixture shall comply with all [department] **authority** standards for construction, maintenance, cleanliness, accessibility and others, not in conflict with the state building code, that the [department] **authority** might provide.

SECTION 1005. ORS 624.060 is amended to read:

624.060. (1) At least once every six months the Director of [Human Services] **the Oregon Health Authority** shall inspect every restaurant located within the jurisdiction of the director. At least once a year the director shall inspect every bed and breakfast facility located within the jurisdiction of the director. The person operating the restaurant or bed and breakfast facility shall, upon the request of the director, permit access to all parts of the establishment.

(2) A copy of each inspection report shall be given to the restaurant or bed and breakfast facility operator or person in charge of the restaurant or bed and breakfast facility, and another copy shall be filed with the records of the [Department of Human Services] **Oregon Health Authority**.

(3) During each inspection, the director shall [insure] **ensure** that restaurants or bed and breakfast establishments that hold valid liquor licenses have properly posted the appropriate sign required by ORS 471.551.

(4) After each inspection, notice regarding compliance with ORS 624.010 to 624.121 by the restaurant or bed and breakfast facility shall be posted at the customary entrance of the restaurant or bed and breakfast facility in public view and shall not be removed by any person except the director.

(5) If the director discovers the violation of any provision of ORS 624.010 to 624.121, the director shall make a second inspection after the lapse of such time as the director deems necessary for the defect to be remedied. When a violation noted on an inspection has been remedied, that violation shall not cumulate with violations noted on a second inspection.

SECTION 1006. ORS 624.070 is amended to read:

624.070. Samples of food, drink and other substances may be taken and examined by the Director of [Human Services] **the Oregon Health Authority** as often as may be necessary for the detection of unwholesomeness or adulteration. The director may condemn and forbid the sale of, or cause to be removed or destroyed, any food or drink which is unwholesome or adulterated.

SECTION 1007. ORS 624.073 is amended to read:

624.073. (1) If the Director of [Human Services] **the Oregon Health Authority** determines that a critical violation of ORS 624.010 to 624.121, or any rule promulgated pursuant thereto, exists in a restaurant or bed and breakfast facility and the critical violation constitutes a potential danger to the public health, the director may revoke, suspend or refuse to issue the license required by ORS

624.020 if, after a reasonable time has been given for correction of the violation, but not longer than 14 days, the violation continues to exist. The director shall reinstate a license that has been revoked or suspended if the director determines that the violation has been corrected.

(2) Notwithstanding ORS 624.020, if the director determines that a critical violation of ORS 624.010 to 624.121, or any rule promulgated pursuant thereto, exists in a restaurant or bed and breakfast facility and the critical violation constitutes an imminent or present danger to the public health, the director may order immediate correction, use of an approved alternative procedure or closure of the restaurant or bed and breakfast facility by written notice thereof to the operator. The inspection report carrying a statement ordering closure and specifying the reasons therefor signed by the director and delivered to the operator may serve as the written notice of the closure. The director shall use inspection forms that clearly display notice that procedures are available to the licensee under ORS chapter 183 for appeal of the closure order. A copy of the notice shall be filed with the records of the [Department of Human Services] **Oregon Health Authority**. The closure order shall have the effect of an immediate revocation of the operator's license. If requested, the director shall provide a prompt hearing after the closure in accordance with ORS chapter 183.

(3) If the director determines that closure of the restaurant or bed and breakfast facility is necessary because failure to correct a critical violation or implement an approved alternative procedure constitutes a potential danger to the public health, or failure to correct a critical violation or implement an approved alternative procedure constitutes an imminent or present danger to the public health, the director shall:

(a) Notify the owner or person in charge of the restaurant or bed and breakfast facility that such restaurant or bed and breakfast facility shall not be used for food service purposes until the critical violations specified in the inspection report have been corrected; and

(b) Post a notice of closure upon the restaurant or bed and breakfast facility at the customary entrance to the restaurant or bed and breakfast facility in public view to the effect that the restaurant or bed and breakfast facility is closed for operation because a critical violation exists.

(4)(a) No person shall remove a notice of closure from a restaurant or bed and breakfast facility until the violation which caused the notice to be posted has been corrected.

(b) No person shall operate a restaurant or bed and breakfast facility upon which a notice of closure has been posted until the violation which caused the notice to be posted has been corrected and the notice has been removed.

(5) The director shall define clearly the criteria and rules for conformance to acceptable food service practices used to determine the restaurant or bed and breakfast facility sanitation score to insure statewide uniformity in the inspection and licensing processes. Critical violations which constitute a potential danger to the public health and critical violations which constitute an imminent or present danger to the public health shall be clearly defined. Minimum acceptable food service standard procedures shall be clearly defined by setting a minimum acceptable sanitation score for a licensed restaurant or bed and breakfast facility.

(6) If a restaurant or bed and breakfast facility obtains a sanitation score of less than the minimum acceptable standard, the restaurant or bed and breakfast facility operator or person in charge of the restaurant or bed and breakfast facility shall be notified of impending closure if, after reinspection within 30 days, the sanitation score does not meet minimum acceptable food service standards. If closure action is taken after reinspection, the restaurant or bed and breakfast facility may not be operated until the restaurant or bed and breakfast facility operator submits a plan for correction of the violations that receives the approval of the director and a subsequent inspection of the restaurant or bed and breakfast facility produces a sanitation score that meets minimum acceptable food service standards.

(7) The [department] **authority** may establish a more frequent inspection schedule for a restaurant licensed under ORS 624.020 that fails to meet specific minimum standards established by the [department. The department] **authority**. **The authority** may charge a fee for costs associated with the performance of additional inspections.

(8) As used in this section, "imminent" means impending or likely to develop without delay.

SECTION 1008. ORS 624.077 is amended to read:

624.077. The [Department of Human Services] **Oregon Health Authority** shall make such rating surveys as are necessary to obtain uniform enforcement of ORS 624.010 to 624.121 throughout the state, and shall prepare and disseminate information pertaining to educational programs for the purpose of encouraging compliance with ORS 624.010 to 624.121 on the part of owners, managers and employees of eating and drinking establishments.

SECTION 1009. ORS 624.080 is amended to read:

624.080. (1) The [Department of Human Services] **Oregon Health Authority** may, by rule, define certain communicable diseases which may be spread to the public by employees of a restaurant, bed and breakfast facility or temporary restaurant.

(2) No person who is affected with a communicable disease described in subsection (1) of this section or is a carrier of such disease shall work in any restaurant, bed and breakfast facility or temporary restaurant. No restaurant, bed and breakfast facility or temporary restaurant shall employ any such person or any person suspected of being affected with any communicable disease or of being a carrier of such disease. If the restaurant, bed and breakfast facility or temporary restaurant manager suspects that any employee has contracted any disease in a communicable form or has become a carrier of such disease the manager shall notify the Director of [Human Services] **the Oregon Health Authority** immediately. A placard containing this subsection shall be posted in all toilet rooms.

(3) When suspicion arises as to the possibility of transmission of infection from any restaurant, bed and breakfast facility or temporary restaurant employee, the director may require any or all of the following measures:

(a) The immediate exclusion of the employee from all restaurants, bed and breakfast facilities and temporary restaurants; and

(b) Adequate medical examinations of the employee and associates of the employee, with such laboratory examinations as may be indicated.

SECTION 1010. ORS 624.086 is amended to read:

624.086. (1) A person may not operate a temporary restaurant without first procuring a license to do so from the [Department of Human Services] **Oregon Health Authority**. The temporary restaurant license shall be posted in a conspicuous place on the premises of the licensee.

(2) Application for a temporary restaurant license shall be in writing in the form prescribed by the [department] **authority** and shall contain the name and address of the applicant, the specific location of the temporary restaurant and any other information the [department] **authority** may require.

(3) All temporary restaurant licenses shall terminate 30 days after issuance unless within the 30 days the temporary restaurant is discontinued or is moved from the specific location for which the license was issued. If within 30 days after issuance the temporary restaurant is discontinued or moved from the specific location for which the license was issued, the license shall terminate upon the discontinuance or the removal.

(4) Except as provided in ORS 624.106 and subsection (6) of this section, every applicant for a temporary restaurant license or renewal thereof shall pay to the [department] **authority** the appropriate license fee under ORS 624.490.

(5) The Director of [Human Services] **the Oregon Health Authority** may suspend, deny or revoke any temporary restaurant license if it appears, after a reasonable time has been given for correction of a sanitation violation, that the applicant does not meet applicable minimum sanitation standards as outlined in ORS 624.010 to 624.121 or any rule adopted thereunder. Any suspension, denial or revocation action shall be taken in accordance with ORS chapter 183.

(6) Notwithstanding any other provision of this section or ORS 624.490:

(a) Each temporary restaurant operating on an intermittent basis, in a grouping of six or more, at the same specific location two or more times within a 30-day period shall be issued one license for each 30-day period.

(b) The total annual amount of license fees for temporary restaurants described in paragraph (a) of this subsection may not exceed the maximum annual license fee for a restaurant that is situated in the county in which the temporary restaurant is situated.

SECTION 1011. ORS 624.091 is amended to read:

624.091. (1) At least once during the operation of a temporary restaurant, the Director of [*Human Services*] **the Oregon Health Authority** shall inspect the facilities and operation. The person operating the temporary restaurant shall, upon request of the director, permit access to all parts of the establishment.

(2) One copy of the inspection report shall be posted by the director somewhere on the establishment premises; and the report shall not be defaced or removed by any person except the director until the temporary restaurant license is terminated. Another copy of the inspection report shall be filed with the records of the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 1012. ORS 624.096 is amended to read:

624.096. When the violation of any provision of ORS 624.010 to 624.121 or any rule promulgated thereunder comes to the attention of the Director of [*Human Services*] **the Oregon Health Authority** and if the violation is of such a nature as to constitute a serious hazard to the health of the public, immediate closure of the temporary restaurant may be secured upon notification of the operator in writing. The inspection report carrying a statement ordering closure and signed by the director delivered to the operator may serve as the written notice of the closure. A copy of this notice shall be filed with the records of the [*Department of Human Services*] **Oregon Health Authority**. The closure order shall have the effect of an immediate revocation of the operator's license. The director shall, if requested, provide a prompt hearing after closure in accordance with ORS chapter 183.

SECTION 1013. ORS 624.106 is amended to read:

624.106. (1)(a) Notwithstanding ORS 624.086 (3) and (4), the [*Department of Human Services*] **Oregon Health Authority** shall issue a license to a benevolent organization to operate a temporary restaurant pursuant to this section if the benevolent organization has notified the [*department*] **authority**, orally or in writing, of its intention to operate a temporary restaurant. The [*department*] **authority** shall provide at least one place in each county at which such notification may be made.

(b) Not more than 13 temporary restaurant licenses per year may be issued pursuant to this section to each benevolent organization.

(c) No license fee or inspection fee shall be charged for a temporary restaurant licensed pursuant to this section.

(2) The [*department*] **authority** shall issue a temporary benevolent restaurant license to each provider of restaurant service at a special event arranged by a benevolent organization. The license shall be provided without fee to each restaurant service provider who files with the benevolent organization a signed statement that the service provider receives no profit from restaurant services performed at the special event. The statement shall be subject to inspection by the [*department*] **authority** at the time inspections are made pursuant to ORS 624.111. For the purpose of licenses issued pursuant to this subsection, a particular benevolent organization may arrange only one special event per calendar year.

(3) All licenses issued pursuant to this section shall terminate three days after issuance unless within the three days the temporary restaurant is discontinued or is moved from the specific location for which the license was issued. If within three days after issuance the temporary restaurant is discontinued or moved from the specific location for which the license was issued, the license shall terminate upon the discontinuance or the removal.

SECTION 1014. ORS 624.111 is amended to read:

624.111. (1) At any time during the operation of a temporary restaurant licensed pursuant to ORS 624.106, the Director of [*Human Services*] **the Oregon Health Authority** may inspect the facilities and operation.

(2) The benevolent organization operating the temporary restaurant shall, upon request of the director, permit access to all parts of the establishment.

SECTION 1015. ORS 624.116 is amended to read:

624.116. The Director of [*Human Services*] **the Oregon Health Authority** may declare that an extraordinary situation exists and may apply alternative food service criteria in an establishment operated to prepare or serve food or beverages to indigent or needy persons by a benevolent organization, as defined by ORS 624.101, without charge or solicitation from those served.

SECTION 1016. ORS 624.121 is amended to read:

624.121. The [*Department of Human Services*] **Oregon Health Authority** shall appoint a State Food Service Advisory Committee. The committee shall consist of volunteer representatives from a cross section of the food service industry, the general public, appropriate local and state groups, county environmental health specialists and other appropriate state agencies, including the State Department of Agriculture. In addition to such other duties as may be prescribed by the [*Department of Human Services*] **authority**, the committee, not later than January 1 of each year in which a biennial session of the Legislative Assembly convenes, shall submit to the [*department*] **authority** and the Legislative Assembly recommendations regarding the implementation of ORS 624.020, 624.060, 624.073, 624.495 and 624.510.

SECTION 1017. ORS 624.165 is amended to read:

624.165. (1) Subject to ORS 624.070, game meat that has been donated to a charitable organization and has been inspected and processed as provided in ORS 619.095 may be served for human consumption by that charitable organization.

(2) As used in subsection (1) of this section:

(a) "Charitable organization" means the Department of Human Services, **Oregon Health Authority**, Oregon Youth Authority, Department of Corrections institutions, low-income nutritional centers, public school nutritional centers, senior nutritional centers, state hospitals and other charitable organizations or public institutions approved by the State Department of Fish and Wildlife.

(b) "Game meat" includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

SECTION 1018. ORS 624.310 is amended to read:

624.310. As used in ORS 624.310 to 624.430 unless the context requires otherwise:

(1) "Approved" means approved by the administrator.

(2) "**Authority**" means **the Oregon Health Authority**.

[2] (3) "Commissary" means commissary catering establishment, restaurant or any other place in which food, beverage, ingredients, containers or supplies are kept, handled, prepared or stored, and from which vending machines or mobile units are serviced.

[3] "*Department*" means *the Department of Human Services*.]

(4) "Director" means the Director of [*Human Services*] **the Oregon Health Authority**.

(5) "Employee" means any operator or any person employed by an operator who handles any food, beverage, or ingredient to be dispensed through vending machines or mobile units, or who comes into contact with product contact surfaces of the container, equipment, utensils or packaging materials, used in connection with vending machines or mobile unit operations, or who otherwise services or maintains one or more such machines or units.

(6) "Food" means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use in whole, or in part, for human consumption.

(7) "Machine location" means the room, enclosure, space or area where one or more vending machines are installed and are in operation.

(8) "Mobile unit" means any vehicle on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer.

(9) "Operator" means any person, who by contract, agreement or ownership is responsible for operating a commissary or warehouse or furnishing, installing, servicing, operating or maintaining one or more vending machines or mobile units.

(10) "Person" means any individual, partnership, corporation, company, firm, institution, association or any other public or private entity.

(11) "Product contact surface" means any surface of the vending machine or mobile unit, appurtenance or container which comes into direct contact with any food, beverage or ingredient.

(12) "Readily perishable food" means any food, beverage or ingredient consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry, or any other food capable of supporting rapid and progressive growth of microorganisms which can cause food infections or food intoxications. However, "readily perishable food" does not include products in hermetically sealed containers processed by heat to prevent spoilage or dehydrated, dry or powdered products which are so low in moisture content as to preclude development of microorganisms.

(13) "Single-service article" means any utensil, container, implement or wrapper intended for use only once in the preparation, storage, display, service or consumption of food or beverage.

(14) "Utensil" means any kitchenware, tableware, glassware, cutlery, container, cleaning brush or other equipment that comes into contact with food or product contact surfaces during cleaning of vending machines, mobile units or commissary equipment, or during storage, preparation, serving, dispensing or consumption of food.

(15) "Vending machine" means any self-service device offered for public use which, upon insertion of a coin, coins, currency or token, or by other means, dispenses unit servings of food or beverage, either in bulk or package, without the necessity of replenishing the device between each vending operation.

(16) "Warehouse" means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units or commissaries are stored.

SECTION 1019. ORS 624.320 is amended to read:

624.320. (1) A person may not operate a vending machine, warehouse, commissary or mobile unit without first procuring a license to do so from the [*Department of Human Services*] **Oregon Health Authority**. The operator shall post the license in a conspicuous place in the warehouse or commissary. The operator shall affix a card, emblem or other device clearly showing the name and address of the licensee and the serial number of the license to each vending machine or mobile unit as the case may be.

(2) Application for the license shall be in writing in the form prescribed by the [*department*] **authority** and shall contain the following information:

- (a) Name and address of the applicant.
- (b) Location of all warehouses or commissaries.
- (c) Locations where supplies are kept.
- (d) Locations where vending machines or mobile units are stored, repaired or renovated.
- (e) Identity and form of food to be dispensed through vending machines.
- (f) Number of each type of vending machine on location.

(3) The operator must keep the specific locations of the vending machines and specific itineraries of the mobile units on file at the operator's business office and readily available to the [*department*] **authority**. If the mobile unit is moved to a delegate county other than a delegate county that licensed the mobile unit, the operator shall notify the **local** health department for the county to which the mobile unit is moved prior to operating the mobile unit within that county. The operator shall furnish the [*department*] **authority** with written details of the conversion of any vending machine to dispense products other than those for which the license was issued.

SECTION 1020. ORS 624.330 is amended to read:

624.330. (1) Vending machines dispensing only ball chewing gum, nutmeats and the following prepackaged foods: Candy, chewing gum, nutmeats, potato chips, pretzels, popcorn, cookies, crackers and bottled or canned soft drink beverages shall be exempt from the provisions of ORS 624.320 and 624.430.

(2) The [*Department of Human Services*] **Oregon Health Authority** may, by rule, exempt certain other types of vending machines from the license requirements of ORS 624.310 to 624.430 when it appears that there is no danger to the life and health of the people of this state.

(3) The provisions of ORS 624.310 to 624.430 do not include commissaries, mobile units or vending machines which are presently licensed and inspected by the State Department of Agriculture or United States Public Health Service.

SECTION 1021. ORS 624.340 is amended to read:

624.340. The Director of [*Human Services*] **the Oregon Health Authority** may deny, suspend or revoke a license in accordance with ORS chapter 183 in any case where the director finds that there has been a substantial failure to comply with the provisions of ORS 624.310 to 624.430 or the rules promulgated under ORS 624.310 to 624.430.

SECTION 1022. ORS 624.370 is amended to read:

624.370. (1) At least once every six months, the Director of [*Human Services*] **the Oregon Health Authority** shall inspect every commissary and warehouse, and a representative number of each operator's mobile units and vending machines. The director shall be granted access at reasonable times to all parts of the commissary and shall have access, either in the company of an employee or otherwise, to the interior of all vending machines or mobile units of the operator at such times as the director considers necessary to [*insure*] **ensure** compliance with the provisions of ORS 624.310 to 624.430.

(2) Samples of food, drink and other substances may be taken and examined by the director as often as may be necessary for the detection of unwholesomeness or adulteration. The director may condemn and prohibit the sale of or cause to be removed or destroyed, any food or drink which contains any toxic, contaminated, filthy, putrid, decomposed or diseased substance or if it is otherwise unfit for human consumption.

(3) One copy of the inspection report shall be posted by the director upon an inside wall of the commissary or placed in the mobile unit. The inspection report shall not be defaced or removed by any person except the director. A copy of the inspection report on vending machines shall be sent to the operator. Another copy of each inspection report shall be filed with the records of the [*Department of Human Services*] **Oregon Health Authority**.

(4) If the director discovers the violation of any provision of ORS 624.310 to 624.430 or any rule promulgated thereunder, the director shall make a second inspection after the lapse of such time as the director considers necessary for the defect to be remedied.

(5) If a violation is of a nature so as to constitute a danger to the health of the people of this state, the director may order immediate closure of the commissary, mobile unit, or vending machine and shall, within 24 hours of the time of inspection, mail to or serve personally on the licensee a copy of the inspection report signed by the director showing thereon the particular facility closed and the reason. The director shall, if requested, hold a hearing in accordance with ORS chapter 183.

SECTION 1023. ORS 624.380 is amended to read:

624.380. (1) No person affected with a communicable disease described in ORS 624.080 (1) or is a carrier of such disease shall work in any commissary, mobile unit or in the servicing of vending machines nor shall any operator employ any such person or any person suspected of being affected with any communicable disease or of being a carrier of such disease. If the operator suspects that any employee has an infectious disease in a communicable form or may be a carrier of such a disease the operator shall notify the Director of [*Human Services*] **the Oregon Health Authority** immediately. A placard containing this section shall be posted in all toilet rooms.

(2) When, in the opinion of the director, there is a possibility of transmission of infection from any person or employee, the director may require the immediate exclusion of such person or employee from all commissaries, mobile units and vending machines and may require a medical examination of the person or employee and associates of the person or employee including such laboratory examinations as may be indicated.

SECTION 1024. ORS 624.390 is amended to read:

624.390. The [*Department of Human Services*] **Oregon Health Authority** shall make reasonable rules for carrying out the provisions of ORS 624.310 to 624.430, including but not limited to the following:

(1) Construction and operation of commissaries, mobile units and vending machines.

- (2) Water supply adequate in quantity and safe for human consumption.
- (3) Disposal of sewage, refuse and other wastes in a manner that will not create a nuisance or health hazard.
- (4) Cleanliness of premises and facilities.
- (5) Refrigeration of perishable foods and the wholesomeness of all food and beverage ingredients.
- (6) Protection of food, utensils, wrapping and serving materials against dust, dirt and contamination.
- (7) Equipment of proper construction and the maintenance of such equipment.
- (8) Approved plumbing.
- (9) Sanitary facilities for employees in commissaries.
- (10) Control and exclusion of insects and rodents.
- (11) Labeling of foods or beverages.
- (12) Exclusion of vending machines dispensing chemicals, sanitizers, detergents, economic poisons and such other compounds of similar nature from immediate areas where food and beverage vending machines are located.
- (13) Approval of plans for commissaries, mobile units and vending machines.

SECTION 1025. ORS 624.400 is amended to read:

624.400. The [*Department of Human Services*] **Oregon Health Authority** shall make such surveys as are necessary to obtain uniform enforcement of ORS 624.310 to 624.430 throughout the state and shall prepare and disseminate information and shall cooperate with and assist local health departments in educational programs for the purpose of encouraging compliance with ORS 624.310 to 624.430 on the part of operators and employees of vending machines and mobile units.

SECTION 1026. ORS 624.410 is amended to read:

624.410. (1) Foods from commissaries or other sources outside the jurisdiction of the [*Department of Human Services*] **Oregon Health Authority** may be sold in the local jurisdiction if such commissaries or other sources of supply conform to the provisions of ORS 624.310 to 624.430 and the rules promulgated under ORS 624.310 to 624.430 or to substantially equivalent provisions.

(2) The [*department*] **authority** shall investigate and survey the system of regulations in effect for commissaries or sources of supply outside the state. Upon determination that the regulations in effect are of a quality substantially equal to the rules of ORS 624.310 to 624.430, the [*department*] **authority** may permit such commissaries or sources of supply to be used in the state.

SECTION 1027. ORS 624.430 is amended to read:

624.430. (1) Except as provided in ORS 624.330, every applicant for a license to operate a commissary, vending machine, warehouse or mobile unit shall pay to the [*Department of Human Services*] **Oregon Health Authority** the appropriate annual fee set forth in ORS 624.490.

(2) All licenses issued under ORS 624.320 expire annually on a date set by [*department*] **authority** rule. A license is not transferable. The [*department*] **authority** may not issue a refund representing any unused portion of a license. The [*department*] **authority** may not refund fees submitted with applications that have been denied.

SECTION 1028. ORS 624.490 is amended to read:

624.490. (1) The [*Department of Human Services*] **Oregon Health Authority** may charge the following fees for the issuance or renewal of licenses:

- (a) \$157.50 for a bed and breakfast facility.
- (b) \$210 for a limited service restaurant.
- (c) For a restaurant in accordance with seating capacity, as follows:
 - (A) \$367.50 for 0 to 15 seats;
 - (B) \$414.75 for 16 to 50 seats;
 - (C) \$472.50 for 51 to 150 seats; and
 - (D) \$525 for more than 150 seats.
- (d) For a temporary restaurant, except as provided in ORS 624.086 and 624.106:
 - (A) \$36.75 for an event lasting one day; and
 - (B) \$52.50 for an event lasting two days or longer.

- (e) \$262.50 for a commissary.
- (f) \$105 for each warehouse.
- (g) \$131.50 for each mobile unit.
- (h) For vending machines in accordance with the number of machines covered by the license as follows:

- (A) \$26.25 for 1 to 10 machines;
- (B) \$52.50 for 11 to 20 machines;
- (C) \$78.75 for 21 to 30 machines;
- (D) \$105 for 31 to 40 machines;
- (E) \$131.25 for 41 to 50 machines;
- (F) \$157.50 for 51 to 75 machines;
- (G) \$210 for 76 to 100 machines;
- (H) \$367.50 for 101 to 250 machines;
- (I) \$577.50 for 251 to 500 machines;
- (J) \$787.50 for 501 to 750 machines;
- (K) \$966 for 751 to 1,000 machines;
- (L) \$1,260 for 1,001 to 1,500 machines; and
- (M) \$1,575 for more than 1,500 machines.

(2) To reinstate a license other than a temporary restaurant license after the expiration date, the operator must pay a reinstatement fee of \$100 in addition to the license fee required under subsection (1) of this section. If the operator reinstates the license more than 30 days after the expiration date, the reinstatement fee shall increase by \$100 on the 31st day following the expiration date and on that day of the month in each succeeding month until the license is reinstated.

(3) The [department] **Oregon Health Authority** or a local public health authority may exempt or reduce the license fee for restaurants operated by benevolent organizations, as defined in ORS 624.101, that provide food or beverages primarily to children, the elderly, the indigent or other needy populations if the persons receiving the food or beverages are not required to pay the full cost of the food or beverages.

SECTION 1029. ORS 624.495 is amended to read:

624.495. (1) The [Department of Human Services] **Oregon Health Authority** shall adopt rules establishing a foodborne illness prevention program for the purpose of protecting the public health. Unless an agreement entered into under ORS 624.530 provides otherwise, the program may include, but need not be limited to, provisions for preventing the spread of communicable disease through food service facilities that are subject to licensing by the [department] **authority** under this chapter and for effective and rapid response to terrorism events related to those facilities.

(2) A program established by the [department] **Oregon Health Authority** under this section must provide for a local public health authority that enters into an intergovernmental agreement under ORS 624.510 to undertake primary responsibility for the delivery of program services within the jurisdiction of the local **public health** authority. A program must also provide for extensive monitoring and review by the [department] **Oregon Health Authority** of local public health authority performance of program services under an intergovernmental agreement.

(3) The [department] **Oregon Health Authority** shall consult with groups representing local health officials within the state and statewide restaurant associations in the development of rules adopted under this section and prior to preparing an intergovernmental agreement delegating administration and enforcement of all or part of the foodborne illness prevention program to a local public health authority.

SECTION 1030. ORS 624.510 is amended to read:

624.510. (1) The Director of [Human Services] **the Oregon Health Authority** shall enter into an intergovernmental agreement with each local public health authority established under ORS 431.375, delegating to the local **public health** authority the administration and enforcement within the jurisdiction of the [authority] **local public health authority** of the powers, duties and functions of the [Director of Human Services] **director** under ORS 624.010 to 624.121, 624.310 to 624.430,

624.650 and 624.992. The intergovernmental agreement must describe the powers, duties and functions of the local public health authority relating to fee collection, licensing, inspections, enforcement, civil penalties and issuance and revocation of permits and certificates, standards for enforcement by the local **public health** authority and the monitoring to be performed by the [Department of Human Services. The department] **Oregon Health Authority. The Oregon Health Authority** shall establish the descriptions and standards in consultation with the local public health authority officials and in accordance with ORS 431.345. The intergovernmental agreement must be a part of the local annual plan submitted by the local public health authority under ORS 431.385. The [department] **Oregon Health Authority** shall review the performance of the local public health authority under any expiring intergovernmental agreement. The review shall include criteria to determine if provisions of ORS 624.073 are uniformly applied to all licensees within the jurisdiction of the local public health authority. In accordance with ORS chapter 183, the director may suspend or rescind an intergovernmental agreement under this subsection. If the [department] **Oregon Health Authority** suspends or rescinds an intergovernmental agreement, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the [department] **Oregon Health Authority** for carrying out the powers, duties and functions under this section.

(2) A local public health authority shall collect fees on behalf of the [department] **Oregon Health Authority** that are adequate to cover the administration and enforcement costs incurred by the local public health authority under this section and the cost of oversight by the [department] **Oregon Health Authority**. If the fee collected by a local public health authority for a license or service is more than 20 percent above or below the fee for that license or service charged by the [department, the department] **Oregon Health Authority, the Oregon Health Authority** shall analyze the local public health authority fee process and determine whether the local public health authority used the proper cost elements in determining the fee and whether the amount of the fee is justified. Cost elements may include, but need not be limited to, expenses related to administration, program costs, salaries, travel expenses and [department] **Oregon Health Authority** consultation fees. If the [department] **Oregon Health Authority** determines that the local public health authority did not use the proper cost elements in determining the fee or that the amount of the fee is not justified, the [department] **Oregon Health Authority** may order the local public health authority to reduce any fee to a level supported by the [department's] **Oregon Health Authority's** analysis of the fee process.

(3) The [department] **Oregon Health Authority**, after consultation with groups representing local health officials in the state, shall by rule assess a remittance from each local public health authority to which health enforcement powers, duties or functions have been delegated under subsection (1) of this section. The amount of the remittance must be specified in the intergovernmental agreement. The remittance shall supplement existing funds for consultation services and development and maintenance of the statewide food service program. The [department] **Oregon Health Authority** shall consult with groups representing local health officials in the state and statewide restaurant associations in developing the statewide food service program.

(4) In any action, suit or proceeding arising out of local public health authority administration of functions pursuant to subsection (1) of this section and involving the validity of a rule adopted by the [department, the department] **Oregon Health Authority, the Oregon Health Authority** shall be made a party to the action, suit or proceeding.

SECTION 1031. ORS 624.530 is amended to read:

624.530. Notwithstanding any provision of ORS 624.010 to 624.121 or 624.310 to 624.430 or statutes administered by the State Department of Agriculture, the Director of [Human Services] **the Oregon Health Authority** and the Director of Agriculture jointly shall adopt rules and enter into interagency agreements necessary to ensure that only one of the agencies inspects and licenses any facility that is subject to regulation by both agencies.

SECTION 1032. ORS 624.550 is amended to read:

624.550. An intergovernmental agreement described in ORS 624.510 must encourage and authorize a local public health authority to which health enforcement powers, duties or functions have

been delegated pursuant to ORS 624.510 to appoint a food service advisory committee consisting of volunteer representatives from a cross section of the food service industry and the general public. A committee established by a local public health authority may:

(1) Make recommendations to the local public health authority regarding the administration and enforcement by the local authority of powers, duties and functions under an existing or proposed intergovernmental agreement; and

(2) Review and provide to the *[Department of Human Services]* **Oregon Health Authority** an evaluation of the effectiveness of this chapter and any foodborne illness prevention program adopted by the *[department]* **Oregon Health Authority** by rule under ORS 624.495.

SECTION 1033. ORS 624.570 is amended to read:

624.570. (1)(a) Except as provided in subsection (6) of this section, any person involved in the preparation or service of food in a restaurant or food service facility licensed under ORS 624.020 or 624.320 must successfully complete a food handler training program and earn a certificate of program completion within 30 days after the date of hire. The person shall thereafter maintain a valid completion certificate at all times during the employment.

(b) A food handler training program offered by the *[Department of Human Services]* **Oregon Health Authority** or the designated agent of the *[department]* **authority**, or offered by a local public health authority or designated agent of the *[local authority and approved by the department,]* **local public health authority that has been approved by the Oregon Health Authority**, is valid in any jurisdiction in the state for the purpose of obtaining the certificate of completion under subsection (2) of this section.

(2) If a person successfully completes the food handler training program required in subsection (1) of this section and pays the appropriate fee, the *[department]* **Oregon Health Authority**, a local public health authority or a designated agent shall issue a certificate of completion. A food handler certificate of completion expires three years after the date of issuance.

(3) All local public health authorities exercising powers, duties and functions pursuant to ORS 624.510, shall ensure the provision of food handler training programs within the jurisdiction of the local public health authority. The *[department]* **Oregon Health Authority** shall establish and maintain food handler training programs in counties without authority delegated under ORS 624.510.

(4) The *[department]* **Oregon Health Authority** shall establish by rule all provisions necessary to administer and enforce the provisions of this section, including but not limited to:

(a) Minimum standards for program content and delivery; and

(b) The establishment of minimum requirements for successful completion of the training.

(5) The *[department]* **Oregon Health Authority**, a local public health authority or a designated agent shall charge a program fee to program participants. The program fee may not exceed \$10. A program provider may assess a new program fee each time a participant takes or retakes all or part of a program or certification exam. A fee not exceeding \$5 may be charged for duplicate certificates of completion.

(6) Persons involved in the preparation or service of food in a temporary restaurant are not required to complete a food handler training program, but the temporary restaurant shall have at least one person who has completed the food handler training program on the premises at all times.

SECTION 1034. ORS 624.630 is amended to read:

624.630. A person may not construct or extensively remodel a facility subject to licensure under this chapter without first submitting construction or remodeling plans to the *[Department of Human Services]* **Oregon Health Authority** and paying a fee to the *[department]* **authority** for review of the plans. The fee shall be assessed in the following amounts:

(1) For initial construction:

(a) Of a full service restaurant, \$250.

(b) Of a bed and breakfast facility, \$75.

(c) Of a commissary, \$125.

(d) Of a warehouse, \$50.

(e) Of a limited service restaurant, \$75.

- (f) Of a mobile unit, \$75.
- (2) For remodeling:
 - (a) Of a full service restaurant, \$100.
 - (b) Of any facility other than a full service restaurant, \$50.

SECTION 1035. ORS 624.650 is amended to read:

624.650. (1) Notwithstanding any provision of ORS 624.010, 624.086, 624.091, 624.510 or 624.530, a temporary restaurant as defined under ORS 624.010 that is a mobile unit as defined under ORS 624.310 may be required to pay a fee not to exceed \$25 for inspection services if the mobile unit is licensed by:

(a) The [Department of Human Services] **Oregon Health Authority** under ORS 624.320 or a local public health authority acting pursuant to an intergovernmental agreement to conduct inspections in accordance with ORS 624.370;

(b) The State Department of Agriculture or the United States Public Health Service as provided under ORS 624.330; or

(c) Another jurisdiction and permitted to be used in this state under ORS 624.410.

(2) This section does not prohibit the [Department of Human Services] **Oregon Health Authority** or a local public health authority delegated authority under an intergovernmental agreement described in ORS 624.510 from enforcing ORS 624.380 or 624.420 or rules adopted by the [department] **Oregon Health Authority** pursuant to ORS 624.390.

SECTION 1036. ORS 624.670 is amended to read:

624.670. All moneys received by the [Department of Human Services] **Oregon Health Authority** under this chapter shall be paid into the State Treasury, deposited in the General Fund to the credit of the Public Health Account and used exclusively by the [department] **authority** for the purpose of carrying out the provisions of this chapter.

SECTION 1037. ORS 624.990 is amended to read:

624.990. (1) Violation of any provision of ORS 624.010 to 624.121 or rules of the [Department of Human Services] **Oregon Health Authority** promulgated under ORS 624.010 to 624.121 is a Class C misdemeanor.

(2) Violation of any provision of ORS 624.310 to 624.430 or rules of the [department] **authority** promulgated under ORS 624.310 to 624.430 is a Class B misdemeanor.

SECTION 1038. ORS 624.992 is amended to read:

624.992. (1) In addition to any other penalty provided by law, the [Department of Human Services] **Oregon Health Authority** may impose a civil penalty on any person for violation of ORS 624.020 (1), 624.060 (1), 624.060 (4), 624.070, 624.073, 624.320, 624.370, 624.380 or 624.430 or rules adopted under ORS 624.010 to 624.121 or 624.390.

(2) After public hearing, the [Department of Human Services] **authority** by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under subsection (1) of this section.

(3) Civil penalties under subsection (1) of this section shall be imposed in the manner provided by ORS 183.745.

(4) A local public health authority delegated civil penalty power under an intergovernmental agreement described in ORS 624.510 shall implement that power in accordance with protocols and limits established by the [Department of Human Services] **Oregon Health Authority** by rule. The local public health authority's civil penalty power applies only to imminent and present dangers to public health and to operation without a license.

SECTION 1039. ORS 628.270 is amended to read:

628.270. (1) The [Department of Human Services] **Oregon Health Authority** may, by rule, define certain communicable diseases which may be spread to the public through the handling of food in refrigerated locker plants.

(2) No person who has a communicable or infectious disease described in subsection (1) of this section shall be permitted to work in or about any refrigerated locker plant or to handle any food in connection with the operation of such plant.

(3) In the discretion of the State Department of Agriculture, an employee of a locker plant may be required to furnish a certificate of health from a physician duly accredited by the [Department of Human Services] **authority** for the purpose of issuing such certificates. If such certificate is required under municipal ordinance upon examination deemed adequate by the [Department of Human Services] **authority**, a certificate issued in compliance with such ordinance is sufficient under this section.

(4) Any health certificate required by this section shall be revoked by the [Department of Human Services] **authority** at any time that the holder thereof is found, upon physical examination of such holder, to have any communicable or infectious disease. Refusal of any person employed in such locker plant to submit to proper and reasonable physical examination, upon written demand by the [Department of Human Services or the State Department of Agriculture] **authority or the department**, is cause for revocation of the employee's health certificate and also is sufficient reason for revocation of the locker plant's license unless the employee immediately is removed from any work or operation in or about such locker plant involving the handling of food.

SECTION 1040. ORS 634.550 is amended to read:

634.550. (1) There is created a Pesticide Analytical and Response Center with a governing board consisting of the following members:

- (a) The Director of Agriculture or designee.
- (b) The State Forester or designee.
- (c) The State Fish and Wildlife Director or designee.
- (d) The Director of the Department of Environmental Quality or designee.
- (e) The Director of [Human Services] **the Oregon Health Authority** or designee.
- (f) The Administrator of the Occupational Safety and Health Division or designee.
- (g) The State Fire Marshal or designee.
- (h) The Director of the Poison Control and Drug Information Program of the Oregon Health and Science University or designee.
- (i) One citizen from the state at large appointed jointly by the Director of Agriculture and the Director of [Human Services] **the Oregon Health Authority**.

(2) The Director of Agriculture shall appoint an administrator for the Pesticide Analytical and Response Center, who shall be responsible to the board for performance of the duties of the center and the board.

(3) The Director of Agriculture or designee and the Director of [Human Services] **the Oregon Health Authority** or designee shall alternate as chairperson of the board for terms of one year each. When one is serving as chairperson, the other shall serve as vice chairperson.

(4) The board shall seek expert consultation from the extension service toxicology program, the Center for Research on Occupational and Environmental Toxicology and such other sources as may be needed.

(5) The functions of the board are to:

- (a) Direct the activities and priorities of the administrator of the center.
- (b) Centralize receiving of information relating to actual or alleged health and environmental incidents involving pesticides.
- (c) Mobilize expertise necessary for timely and accurate investigation of pesticide incidents and analyses of associated samples.
- (d) Identify trends and patterns of problems related to pesticide use.
- (e) Make recommendations for action to a state agency when a majority of the board considers that such action may be warranted on the basis of the findings of an incident investigation or on the basis of identification of a trend or pattern of problems. Recommended actions may include, but not be limited to, regulatory action, modification of administrative rules, proposal of new legislation, public education and consultation to industry.
- (f) Report in a standardized format the results of the investigations of pesticide incidents.
- (g) Establish by consensus, procedures for carrying out its responsibilities within the limits of available resources.

(h) Prepare and submit to each session of the Legislative Assembly a report of the activities of the center that includes a record of recommendations made by the board and the actions resulting from the board's work.

(6) Upon receipt of a recommendation from the board, a state agency shall respond in a timely manner to inform the board of actions taken or the reasons for taking no action on the recommendation.

(7) Any medical information received by a member of the board or by a staff member of the center in the course of carrying out the duties of the center or the board shall be held confidential as provided in ORS 192.518 to 192.529 and 433.008.

(8) The functions of the board do not supersede the regulatory authority of any agency and are not in lieu of the regulatory authority of any agency.

SECTION 1041. ORS 656.319 is amended to read:

656.319. (1) With respect to objection by a claimant to denial of a claim for compensation under ORS 656.262, a hearing thereon shall not be granted and the claim shall not be enforceable unless:

(a) A request for hearing is filed not later than the 60th day after the mailing of the denial to the claimant; or

(b) The request is filed not later than the 180th day after mailing of the denial and the claimant establishes at a hearing that there was good cause for failure to file the request by the 60th day after mailing of the denial.

(2) Notwithstanding subsection (1) of this section, a hearing shall be granted even if a request therefor is filed after the time specified in subsection (1) of this section if the claimant can show lack of mental competency to file the request within that time. The period for filing under this subsection shall not be extended more than five years by lack of mental competency, nor shall it extend in any case longer than one year after the claimant regains mental competency.

(3) With respect to subsection (2) of this section, lack of mental competency shall apply only to an individual suffering from such mental disorder, mental illness or nervous disorder as is required for commitment or voluntary admission to a treatment facility pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380 and the rules of the [*Department of Human Services*] **Oregon Health Authority**.

(4) With respect to objections to a reconsideration order under ORS 656.268, a hearing on such objections shall not be granted unless a request for hearing is filed within 30 days after the copies of the reconsideration order were mailed to the parties.

(5) With respect to objection by a claimant to a notice of refusal to close a claim under ORS 656.268, a hearing on the objection shall not be granted unless the request for hearing is filed within 60 days after copies of the notice of refusal to close were mailed to the parties.

(6) A hearing for failure to process or an allegation that the claim was processed incorrectly shall not be granted unless the request for hearing is filed within two years after the alleged action or inaction occurred.

(7) With respect to objection by a claimant to a notice of closure issued under ORS 656.206, a hearing on the objection shall not be granted unless the request for hearing is filed within 60 days after the notice of closure was mailed to the claimant.

SECTION 1042. ORS 657.010, as amended by section 17, chapter 45, Oregon Laws 2008, is amended to read:

657.010. As used in this chapter, unless the context requires otherwise:

(1) "Base year" means the first four of the last five completed calendar quarters preceding the benefit year.

(2) "Benefits" means the money allowances payable to unemployed persons under this chapter.

(3) "Benefit year" means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consecutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of the individual's last preceding benefit year except that

the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the Director of the Employment Department may, by regulation, prescribe.

(5) "Contribution" or "contributions" means the taxes, as defined in subsection (13) of this section, that are the money payments required by this chapter, or voluntary payments permitted, to be made to the Unemployment Compensation Trust Fund.

(6) "Educational institution," including an institution of higher education as defined in subsection (9) of this section, means an institution:

(a) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher;

(b) That is accredited, registered, approved, licensed or issued a permit to operate as a school by the Department of Education or other government agency, or that offers courses for credit that are transferable to an approved, registered or accredited school;

(c) In which the course or courses of study or training that it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and

(d) In which the course or courses of study or training are offered on a regular and continuing basis.

(7) "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(8) "Hospital" means an organization that has been licensed, certified or approved by the [Department of Human Services] **Oregon Health Authority** as a hospital.

(9) "Institution of higher education" means an educational institution that:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program that is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(10) "Internal Revenue Code" means the federal Internal Revenue Code, as amended and in effect on December 31, 2007.

(11) "Nonprofit employing unit" means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(12) "State" includes, in addition to the states of the United States of America, the District of Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be considered a state on and after the day on which the United States Secretary of Labor first approves the Virgin Islands' law under section 3304(a) of the Federal Unemployment Tax Act as amended by Public Law 94-566.

(13) "Taxes" means the money payments to the Unemployment Compensation Trust Fund required, or voluntary payments permitted, by this chapter.

(14) "Valid claim" means any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150.

(15) "Week" means any period of seven consecutive calendar days ending at midnight, as the director may, by regulation, prescribe. The director may by regulation prescribe that a "week" shall be "in," "within," or "during" the calendar quarter that includes the greater part of such week.

SECTION 1043. ORS 657.880 is amended to read:

657.880. In order to provide health care coverage for eligible unemployed individuals, the Employment Department, upon approval and funding by the Emergency Board, is authorized:

(1) To deduct an amount from unemployment compensation otherwise payable to an individual and to use the amount so deducted to pay for health care coverage if the individual voluntarily elects to have such deduction made, and such deduction is made under a program which meets applicable federal requirements and has been approved in accordance with the provisions of this section and ORS 657.885.

(2) To certify to the [*Department of Human Services*] **Oregon Health Authority** those unemployed individuals eligible to receive health care coverage pursuant to criteria established by or pursuant to federal law in order to receive federal funds for obtaining such coverage.

(3) To enter into contracts with other appropriate federal or state agencies.

SECTION 1044. ORS 657.885 is amended to read:

657.885. For purposes of this section and ORS 657.880, the term “health care coverage” means coverage under:

(1) Health insurance policies issued by qualified insurers and health care service contractors;

(2) Contracts entered into by and between the State of Oregon and qualified insurers and health care service contractors; and

(3) The medical assistance program administered by the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 1045. ORS 657A.260 is amended to read:

657A.260. (1) After consultation with appropriate agencies and interested persons, the Child Care Division by rule shall establish minimum standards for child care facilities and the operation thereof and for the administration of ORS 657A.030 and 657A.250 to 657A.450.

(2) In establishing minimum standards of health and safety, the division shall consult with the [*Department of Human Services*] **Oregon Health Authority** and the State Fire Marshal and shall give consideration to their recommendations and to all basic requirements for the protection of the children to receive child care, including the criteria prescribed in ORS 657A.290, and may adopt rules applicable to different categories of child care facilities, considering:

(a) The numbers and ages of the children to receive care in the child care facility.

(b) The number, experience and training of the staff of the child care facility.

(c) The types and qualities of equipment and other factors in the physical plant of the child care facility.

(d) Any other factor affecting the care provided in the child care facility.

SECTION 1046. ORS 657A.400 is amended to read:

657A.400. (1) An authorized representative of the [*Department of Human Services*] **Oregon Health Authority** may inspect the premises of a child care facility certified under ORS 657A.280 to determine whether the facility is in conformity with applicable laws and regulations relating to health and sanitation.

(2) An authorized representative of the [*Department of Human Services*] **authority** shall inspect any child care facility when requested to do so by the Child Care Division in accordance with arrangements under ORS 657A.420 and shall submit written findings to the Child Care Division. The Child Care Division shall not issue or renew any certification for any child care facility for which an inspection by the [*Department of Human Services*] **authority** has been requested unless an authorized representative of the [*Department of Human Services*] **authority** submits a written finding that the facility is in compliance with applicable laws and regulations relating to health and sanitation.

(3) An environmental health specialist’s inspection may be performed by a private consultant so long as the consultant is registered under ORS chapter 700.

SECTION 1047. ORS 657A.410 is amended to read:

657A.410. (1) In the event that any authorized representative of the Child Care Division, [*Department of Human Services*] **Oregon Health Authority** or other agency is denied access to any

premises for the purpose of making an inspection in the administration of ORS 181.537, 657A.030 and 657A.250 to 657A.450, the representative shall not inspect the premises without a search warrant.

(2) Application for a search warrant to inspect the premises shall be made to any magistrate authorized to issue a warrant of arrest. The application must be supported by an affidavit filed with the magistrate showing probable cause for the inspection by stating the purpose and extent of the proposed inspection, the statutes and rules which provide the basis for inspection, whether it is a routine or periodic inspection, an on-site review or an investigation instituted by complaint and other specific or general information concerning the premises.

(3) If the magistrate is satisfied that there is probable cause to believe that the grounds of the application exist, the magistrate shall issue the search warrant specifying the purpose and extent of the inspection, on-site review or investigation of the premises covered by the warrant.

SECTION 1048. ORS 657A.420 is amended to read:

657A.420. The Child Care Division may enter into cooperative arrangements with the [*Department of Human Services*,] **Oregon Health Authority**, the State Fire Marshal and other public agencies for the provision of services in the inspection of child care facilities in the administration of ORS 181.537, 657A.030 and 657A.250 to 657A.450. The arrangements shall designate which services shall be reimbursed and the rate and manner of reimbursement.

SECTION 1049. ORS 675.360 is amended to read:

675.360. (1) The Legislative Assembly hereby declares that the comprehensive treatment of sex offenders who are subject to the supervision of the criminal justice and juvenile justice systems and the [*Department of Human Services*] **Oregon Health Authority** is necessary in order to work toward the elimination of sex offenses. The Legislative Assembly hereby recognizes that sex offender therapists who examine and treat sex offenders therefore occupy a vital role in protecting the public from sex offenders who remain in the community prior to or following disposition or who will re-enter the community following a period of incarceration.

(2) The Legislative Assembly further finds that the qualifications, practices, techniques and levels of effectiveness of sex offender therapists vary widely and that the court's ability to effectively determine appropriate sentencing and monitoring for sex offenders, thus curtailing the incidence of recidivism in such offenders and enhancing the protection of victims and potential victims, is undermined by a lack of regulated standards of practice and professional responsibility.

(3) The Legislative Assembly recognizes the right of sex offender therapists to practice, consistent with the paramount requirement of public safety. Public safety is best served by regulating sex offender therapists whose clients are being treated under alternative sentencing or disposition, parole, post-prison supervision, supervision by a county juvenile department or custody of the [*Department of Human Services*] **Oregon Health Authority** or the Oregon Youth Authority.

(4) ORS 675.375 establishes the titles certified clinical sex offender therapist and certified associate sex offender therapist. ORS 675.360 to 675.410 do not prohibit others from providing services to treat sex offenders. However, only those certified under ORS 675.360 to 675.410 shall represent the designated titles to the public. Adult and juvenile parole and probation authorities and the [*Department of Human Services*] **Oregon Health Authority** may restrict their referrals to those providers who are certified under ORS 675.360 to 675.410.

SECTION 1050. ORS 675.365 is amended to read:

675.365. As used in ORS 675.360 to 675.410:

(1) "Certified associate sex offender therapist" means a person who is certified under ORS 675.375 or 675.380 to provide services for the treatment and rehabilitation of sex offenders while under the direct supervision of a certified clinical sex offender therapist.

(2) "Certified clinical sex offender therapist" means a person who is certified under ORS 675.375 or 675.380 to provide services for the treatment and rehabilitation of sex offenders and who may supervise certified associate sex offender therapists.

(3) "Certified sex offender therapist" means a certified clinical sex offender therapist or a certified associate sex offender therapist.

(4) "Direct supervision" means a minimum of two hours of supervision by a certified clinical sex offender therapist for each 45 hours of direct clinical contact with a sex offender.

(5) "Sex offender" means a person convicted or adjudicated of a sex crime, as defined in ORS 181.594, or a sexual offense, as provided in ORS 163.305 to 163.467, and mandated by a court, a releasing authority, including the Oregon Youth Authority, or the [Department of Human Services] **Oregon Health Authority** to successfully complete a sex offender treatment program.

(6) "Sex offender treatment" means the process of evaluation, assessment and reformation of sex offenders.

SECTION 1051. ORS 676.160 is amended to read:

676.160. As used in ORS 676.165 to 676.180, "health professional regulatory board" means the:

(1) State Board of Examiners for Speech-Language Pathology and Audiology;

(2) State Board of Chiropractic Examiners;

(3) State Board of Clinical Social Workers;

(4) Oregon Board of Licensed Professional Counselors and Therapists;

(5) Oregon Board of Dentistry;

(6) Board of Examiners of Licensed Dietitians;

(7) State Board of Massage Therapists;

(8) State Mortuary and Cemetery Board;

(9) Board of Naturopathic Examiners;

(10) Oregon State Board of Nursing;

(11) Board of Examiners of Nursing Home Administrators;

(12) Oregon Board of Optometry;

(13) State Board of Pharmacy;

(14) Oregon Medical Board;

(15) Occupational Therapy Licensing Board;

(16) Physical Therapist Licensing Board;

(17) State Board of Psychologist Examiners;

(18) Board of Radiologic Technology;

(19) Oregon State Veterinary Medical Examining Board; and

(20) [Department of Human Services] **Oregon Health Authority** to the extent that the [department] **authority** certifies emergency medical technicians.

SECTION 1052. ORS 677.290 is amended to read:

677.290. (1) All moneys received by the Oregon Medical Board under this chapter shall be paid into the General Fund in the State Treasury and placed to the credit of the Oregon Medical Board Account which is established. Such moneys are appropriated continuously and shall be used only for the administration and enforcement of this chapter.

(2) Notwithstanding subsection (1) of this section, the board may maintain a revolving account in a sum not to exceed \$50,000 for the purpose of receiving and paying pass-through moneys relating to peer review pursuant to its duties under ORS 441.055 [(6) and] (7) **and** (8) and in administering programs pursuant to its duties under this chapter relating to the education and rehabilitation of licensees in the areas of chemical substance abuse, inappropriate prescribing and medical competence. The creation of and disbursement of moneys from the revolving account shall not require an allotment or allocation of moneys pursuant to ORS 291.234 to 291.260. All moneys in the account are continuously appropriated for purposes set forth in this subsection.

(3) Each year \$10 shall be paid to the Oregon Health and Science University for each actively in-state registered physician under ORS 677.265 which amount is continuously appropriated to the Oregon Health and Science University to be used in maintaining a circulating library of medical and surgical books and publications for the use of practitioners of medicine in this state, and when not so in use to be kept at the library of the School of Medicine and accessible to its students. The balance of the money received by the board is appropriated continuously and shall be used only for the administration and enforcement of this chapter, but any part of the balance may, upon the order of the board, be paid into the circulating library fund.

SECTION 1053. ORS 677.491 is amended to read:

677.491. (1) Whenever any physician determines or reasonably suspects the injury or death of a person to be toy-related, the physician shall, in accordance with rules adopted under subsection (5) of this section, report the physician's findings to the Director of [*Human Services*] **the Oregon Health Authority**.

(2) The director of any hospital, health care facility, health maintenance organization, public health center, medical center or emergency medical treatment facility where any physician has made a determination or has a reasonable suspicion under subsection (1) of this section as to whether an injury or death is toy-related, shall, in accordance with the rules adopted under subsection (5) of this section, report that physician's findings to the Director of [*Human Services*] **the Oregon Health Authority**.

(3) The Director of [*Human Services*] **the Oregon Health Authority** shall review, organize and keep a record of the information set forth in the reports of toy-related injuries and deaths submitted by physicians under this section. The director, on a regular basis, shall make the information recorded under this section available to the United States Consumer Product Safety Commission for inclusion in its Injury or Potential Injury Incident Data Base. The information so recorded shall also be made available to the public for a fee determined by the director.

(4) If the [*Director of Human Services*] **director** determines that a specific toy or item poses an immediate danger or potential threat to the safety of the citizens of this state, the director shall immediately issue a public notice warning the public, retail sellers and distributors of the director's findings and recommendations concerning that toy or item.

(5) The [*Director of Human Services*] **director** shall adopt rules to implement this section.

SECTION 1054. ORS 677.510 is amended to read:

677.510. (1) A person licensed to practice medicine under this chapter shall not use the services of a physician assistant without the prior approval of the Oregon Medical Board. The application shall state the name of the physician assistant, describe the manner and extent to which the physician assistant's services would be used and supervised, state the education, training and experience of the physician assistant and provide such other information in such a form as the board may require.

(2) The board may approve or reject an application, or it may modify the proposed use of the services of the physician assistant and approve the application as modified. When it appears to the board that the services of a physician assistant are being used in a manner inconsistent with the approval granted, the board may withdraw its approval. If a hearing is requested by the physician or the physician assistant upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with ORS 677.200.

(3)(a) The supervising physician may have a different specialty from the physician assistant. A physician assistant may be supervised by no more than four physicians. A physician may supervise four physician assistants. A supervising physician may designate a physician to serve as the agent of the supervising physician for a predetermined period of time.

(b) The board may review and approve applications from physicians serving federally designated underserved populations, or physicians in federally designated health professional shortage areas, federally designated medically underserved areas or areas designated as medically disadvantaged and in need of primary health care providers by the Director of [*Human Services*] **the Oregon Health Authority** or the Office of Rural Health to supervise more than four physician assistants, and applications from physician assistants to be supervised by more than four physicians. A physician assistant may render services in an emergency room and other hospital settings, a nursing home, a corrections institution and any site included in the practice description.

(4) A licensed physician assistant may make application to the board for emergency drug dispensing authority. The board shall consider the criteria adopted by the Physician Assistant Committee under ORS 677.545 (4) in reviewing the application. Such emergency dispensing shall be of drugs prepared or prepackaged by a licensed pharmacist, manufacturing drug outlet or wholesale drug outlet authorized to do so under ORS chapter 689.

(5) A physician assistant for whom an application under subsection (1) of this section has been approved by the board on or after January 2, 2006, shall submit to the board, within 24 months after the approval, documentation of completion of:

(a) A pain management education program approved by the board and developed in conjunction with the Pain Management Commission established under ORS 409.500; or

(b) An equivalent pain management education program, as determined by the board.

SECTION 1055. ORS 677.515 is amended to read:

677.515. (1) This chapter does not prohibit a person from rendering medical services:

(a) If the person has satisfactorily completed an educational program for physician assistants, approved by the Oregon Medical Board, for physician assistants;

(b) If the services are rendered under the supervision and control of a person licensed under this chapter to practice medicine and the use of the physician assistant's services has been approved by the board as provided by ORS 677.510; and

(c) If the person is licensed as a physician assistant as provided by ORS 677.495 and 677.505 to 677.525.

(2) This chapter does not prohibit a student enrolled in an approved program for educating physician assistants from rendering medical services if the services are rendered in the course of the program.

(3) Notwithstanding subsections (1) and (2) of this section, the degree of independent judgment that a physician assistant may exercise shall be determined by the supervising physician and the physician assistant in accordance with a practice description approved by the board.

(4) A physician assistant may provide medical services to patients in a setting where a supervising physician does not regularly practice if the following conditions exist:

(a) Direct communication either in person or by telephone, radio, radiotelephone, television or similar means is maintained; and

(b) The medical services provided by the physician assistant are reviewed by a supervising physician on a regularly scheduled basis as determined by the board.

(5) A supervising physician, upon the approval of the board and in accordance with the rules established by the board, may delegate to the physician assistant the authority to administer and dispense limited emergency medications and to prescribe medications pursuant to this section and ORS 677.535 to 677.545. Neither the board nor the Physician Assistant Committee shall limit the privilege of administering, dispensing and prescribing to population groups federally designated as underserved, or to geographic areas of the state that are federally designated health professional shortage areas, federally designated medically underserved areas or areas designated as medically disadvantaged and in need of primary health care providers by the Director of [*Human Services*] **the Oregon Health Authority** or the Office of Rural Health. All prescriptions written pursuant to this subsection shall bear the name, office address and telephone number of the supervising physician.

(6) Nothing in this chapter is intended to require or prohibit a physician assistant from practicing in a hospital licensed pursuant to ORS 441.015 to 441.089.

(7) Prescriptions for medications prescribed by a physician assistant in accordance with this section and ORS 475.005, 677.010, 677.500, 677.510 and 677.535 to 677.545 and dispensed by a licensed pharmacist may be filled by the pharmacist according to the terms of the prescription, and the filling of such a prescription shall not constitute evidence of negligence on the part of the pharmacist if the prescription was dispensed within the reasonable and prudent practice of pharmacy.

SECTION 1056. ORS 677.805 is amended to read:

677.805. As used in ORS 677.805 to 677.840:

(1) "Ankle" means the tibial plafond and its posterolateral border or posterior malleolus, the medial malleolus, the distal fibula or lateral malleolus, and the talus.

(2) "Board" means the Oregon Medical Board.

(3) "Podiatric physician and surgeon" means a podiatric physician and surgeon whose practice is limited to treating ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle.

(4) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital certified in the manner described in ORS 441.055 [(2)] (3) or in an ambulatory surgical center licensed by the [Department of Human Services] **Oregon Health Authority** and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Oregon Medical Board. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the entire foot.

SECTION 1057. ORS 677.812 is amended to read:

677.812. Surgery of the ankle as defined in ORS 677.805 must be conducted:

(1) In a hospital certified in the manner described in ORS 441.055 [(2)] (3) or in an ambulatory surgical center licensed by the [Department of Human Services] **Oregon Health Authority**; and

(2) By a podiatric physician and surgeon who meets the qualifications for ankle surgery established by rule of the Oregon Medical Board.

SECTION 1058. ORS 678.153 is amended to read:

678.153. The Department of Human Services, **the Oregon Health Authority** and the Oregon State Board of Nursing shall enter into an interagency agreement to share the results of nationwide criminal records checks conducted under ORS 181.534 on subject individuals who are subject to criminal records checks by [both] the department, **the authority** and the board.

SECTION 1059. ORS 678.362 is amended to read:

678.362. (1) As used in this section:

(a) "Circulating nurse" means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of operating room team members during surgery.

(b) "Type I ambulatory surgical center" means a licensed health care facility for the performance of outpatient surgical procedures including, but not limited to, cholecystectomies, tonsillectomies or urological procedures, involving general anesthesia or a relatively high infection control consideration.

(2)(a) The duties of a circulating nurse performed in an operating room of a Type I ambulatory surgical center or a hospital shall be performed by a registered nurse licensed under ORS 678.010 to 678.410.

(b) In any case requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure.

(c) Nothing in this section precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

(3) At the request of a Type I ambulatory surgical center or a hospital, the [Department of Human Services] **Oregon Health Authority** may grant a variance from the requirements of this section based on patient care needs or the nursing practices of the surgical center or hospital.

SECTION 1060. ORS 678.440 is amended to read:

678.440. (1) It is the intent of the Legislative Assembly to require that nursing assistants be adequately trained.

(2) The Oregon State Board of Nursing shall prepare curricula and standards for training programs for nursing assistants. Such curricula and standards shall provide for additional training for nursing assistants to administer noninjectable medications.

(3) The Department of Human Services may impose civil penalties or revoke the license of any [health care facility] **long term care facility** that employs any untrained nursing assistant for a period of more than eight weeks without providing for the training prescribed by the board. Any license which is revoked shall be revoked as provided in ORS 441.030.

(4) The Oregon Health Authority may impose civil penalties or revoke the license of any health care facility that employs any untrained nursing assistant for a period of more than eight weeks without providing for the training prescribed by the board. Any license which is revoked shall be revoked as provided in ORS 441.030.

[(4)] (5) As used in this section, "nursing assistant" means a person who assists licensed nursing personnel in the provision of nursing care.

SECTION 1061. ORS 678.730 is amended to read:

678.730. (1) Any individual is qualified for licensure as a nursing home administrator who:

(a) Meets the training or experience and other standards established by rules of the Board of Examiners of Nursing Home Administrators. The board shall accept one year of experience as an administrator serving a dual facility in lieu of any residency or intern requirement established pursuant to this paragraph; and

(b) Has passed an examination as provided in ORS 678.740.

(2) Each license as a nursing home administrator may be renewed by the board upon compliance by the licensee with the requirements of ORS 678.760 and by presenting evidence of the completion of the continuing education work required by the board. The board may require up to 50 hours of continuing education in any one-year period.

(3) In establishing educational standards pursuant to subsection (1)(a) of this section, the board shall require a baccalaureate degree from an accredited school of higher education. However, the educational requirement does not apply to any person who:

(a) Was a licensed administrator in any jurisdiction of the United States prior to January 1, 1983; or

(b) Was an administrator of a dual facility meeting the experience requirements pursuant to subsection (1)(a) of this section.

(4) Notwithstanding the requirements established under subsection (1) of this section, upon the request of the governing body of a hospital, as defined in ORS 442.015 [(19)], the board shall deem a health care administrator to have met the requirements for licensure as a nursing home administrator if the health care administrator possesses an advanced degree in management and has at least 10 years of experience in health care management.

SECTION 1062. ORS 680.205 is amended to read:

680.205. (1) A dental hygienist issued a permit to act as a limited access permit dental hygienist under ORS 680.200 shall be authorized to render all services within the scope of practice of dental hygiene, as defined in ORS 679.010, without the supervision of a dentist and as authorized by the limited access permit to:

(a) Patients or residents of the following facilities or programs who, due to age, infirmity or disability, are unable to receive regular dental hygiene treatment:

(A) Nursing homes as defined in ORS 678.710;

(B) Adult foster homes as defined in ORS 443.705;

(C) Residential care facilities as defined in ORS 443.400;

(D) Adult congregate living facilities as defined in ORS 441.525;

(E) Mental health residential programs administered by the [Department of Human Services]

Oregon Health Authority;

(F) Facilities for mentally ill persons, as those terms are defined in ORS 426.005;

(G) Facilities for persons with mental retardation, as those terms are defined in ORS 427.005;

(H) Local correctional facilities and juvenile detention facilities as those terms are defined in ORS 169.005, regional correctional facilities as defined in ORS 169.620, youth correction facilities as defined in ORS 420.005, youth care centers as defined in ORS 420.855, and Department of Corrections institutions as defined in ORS 421.005; or

(I) Public and nonprofit community health clinics.

(b) Adults who are homebound.

(c) Students or enrollees of nursery schools and day care programs and their siblings under 18 years of age, Job Corps and other similar employment training facilities, primary and secondary

schools, including private schools and public charter schools, and persons entitled to benefits under the Women, Infants and Children Program.

(2) The Oregon Board of Dentistry may authorize the provision of dental hygiene services by a limited access permit dental hygienist at locations or to populations that are underserved or lack access to dental hygiene services.

(3) At least once each calendar year, a dental hygienist issued a permit to act as a limited access permit dental hygienist shall refer each patient or resident to a dentist who is available to treat the patient or resident.

(4) This section does not authorize a limited access permit dental hygienist to administer local anesthesia, denture soft lines, temporary restorations and radiographs except under the general supervision of a dentist licensed under ORS chapter 679, or to administer nitrous oxide except under the indirect supervision of a dentist licensed under ORS chapter 679.

(5) A limited access permit dental hygienist may assess the need for and appropriateness of sealants, apply sealants and write prescriptions for all applications of fluoride in which fluoride is applied or supplied to patients.

(6) A person granted a limited access permit under ORS 680.200 shall also procure all other permits or certificates required by the board under ORS 679.250.

SECTION 1063. ORS 682.017 is amended to read:

682.017. (1) In accordance with ORS chapter 183, the [Department of Human Services] **Oregon Health Authority** may adopt and may when necessary amend or repeal such rules as are necessary for carrying out this chapter.

(2) The [department] **authority** is authorized and directed to establish appropriate rules in accordance with the provisions of ORS chapter 183 concerning the administration of this chapter. Such rules may deal with, but are not limited to, such matters as criteria for requirements, types and numbers of emergency vehicles including supplies and equipment carried, requirements for the operation and coordination of ambulances and other emergency care systems, criteria for the use of two-way communications, procedures for summoning and dispatching aid and other necessary and proper matters.

SECTION 1064. ORS 682.019 is amended to read:

682.019. The [Department of Human Services] **Oregon Health Authority** may receive and disburse such federal funds as may be available for carrying out any of the provisions of ORS 820.330 to 820.380 or this chapter.

SECTION 1065. ORS 682.025 is amended to read:

682.025. As used in this chapter, unless the context requires otherwise:

(1) "Ambulance" or "ambulance vehicle" means any privately or publicly owned motor vehicle, aircraft or watercraft that is regularly provided or offered to be provided for the emergency transportation of persons who are ill or injured or who have disabilities.

(2) "Ambulance service" means any person, governmental unit, corporation, partnership, sole proprietorship or other entity that operates ambulances and that holds itself out as providing pre-hospital care or medical transportation to persons who are ill or injured or who have disabilities.

(3) "**Authority**" means the **Oregon Health Authority**.

[(3)] (4) "Board" means the Oregon Medical Board.

[(4)] "*Department*" means the *Department of Human Services*.]

(5) "Emergency care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of persons who are ill or injured or who have disabilities; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in prehospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(6) "Emergency medical technician" or "EMT" means a person who has received formal training in prehospital and emergency care, and is state certified to attend any person who is ill or injured

or who has a disability. Police officers, firefighters, funeral home employees and other personnel serving in a dual capacity one of which meets the definition of “emergency medical technician” are “emergency medical technicians” within the meaning of this chapter.

(7) “First responder” means a person who has successfully completed a first responder training course approved by the [department] **authority** and:

(a) Has been examined and certified as a first responder by an authorized representative of the [department] **authority** to perform basic emergency and nonemergency care procedures; or

(b) Has been otherwise designated as a first responder by an authorized representative of the [department] **authority** to perform basic emergency and nonemergency care procedures.

(8) “Fraud or deception” means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or false impression knowingly is given.

(9) “Governmental unit” means the state or any county, municipality or other political subdivision or any department, board or other agency of any of them.

(10) “Highway” means every public way, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, used or intended for the use of the general public for vehicles.

(11) “Nonemergency care” means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24 hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Oregon Medical Board in the course of providing prehospital care as defined by this section.

(12) “Owner” means the person having all the incidents of ownership in an ambulance service or an ambulance vehicle or where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of an ambulance vehicle or operation of an ambulance service under a security agreement or a lease for a term of 10 or more successive days.

(13) “Patient” means a person who is ill or injured or who has a disability and who is transported in an ambulance.

(14) “Person” means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose or organization of any kind and includes any receiver, trustee, assignee or other similar representative thereof.

(15) “Prehospital care” means that care rendered by emergency medical technicians as an incident of the operation of an ambulance as defined by this chapter and that care rendered by emergency medical technicians as incidents of other public or private safety duties, and includes, but is not limited to, “emergency care” as defined by this section.

(16) “Scope of practice” means the maximum level of emergency or nonemergency care that an emergency medical technician may provide.

(17) “Standing orders” means the written protocols that an emergency medical technician follows to treat patients when direct contact with a physician is not maintained.

(18) “Supervising physician” means a medical or osteopathic physician licensed under ORS chapter 677, actively registered and in good standing with the board, who provides direction of emergency or nonemergency care provided by emergency medical technicians.

(19) “Unprofessional conduct” means conduct unbecoming a person certified in emergency care, or detrimental to the best interests of the public and includes:

(a) Any conduct or practice contrary to recognized standards of ethics of the medical profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might impair an emergency medical technician’s ability safely and skillfully to practice emergency or nonemergency care;

(b) Willful performance of any medical treatment which is contrary to acceptable medical standards; and

(c) Willful and consistent utilization of medical service for treatment which is or may be considered inappropriate or unnecessary.

SECTION 1066. ORS 682.028 is amended to read:

682.028. (1) It is unlawful for any person or governmental unit to:

(a) Intentionally make any false statement on an application for an ambulance service license, ambulance vehicle license or for certification as an emergency medical technician or first responder or on any other documents required by the [*Department of Human Services*] **Oregon Health Authority**; or

(b) Make any misrepresentation in seeking to obtain or retain a certification or license.

(2) Any violation described in subsection (1) of this section is also grounds for denial, suspension or revocation of a certification or license under ORS 682.220.

SECTION 1067. ORS 682.031 is amended to read:

682.031. (1) As used in this section, "political subdivision" includes counties, cities, districts, authorities and other public corporations and entities organized and existing under statute or charter.

(2) An ordinance of any political subdivision regulating ambulance services or emergency medical technicians shall not require less than is required under ORS 820.300 to 820.380, or this chapter or the rules adopted by the [*Department of Human Services*] **Oregon Health Authority** under this chapter.

(3) When a political subdivision enacts an ordinance regulating ambulance services or emergency medical technicians, the ordinance must comply with the county plan for ambulance services and ambulance service areas adopted under ORS 682.062 by the county in which the political subdivision is situated and with the rules of the [*department*] **Oregon Health Authority** relating to such services and service areas. The determination of whether the ordinance is in compliance with the county plan shall be made by the county governing body.

SECTION 1068. ORS 682.039 is amended to read:

682.039. (1) The [*Department of Human Services*] **Oregon Health Authority** shall appoint a State Emergency Medical Service Committee composed of 18 members as follows:

(a) Seven physicians licensed under ORS chapter 677 whose practice consists of routinely treating emergencies such as cardiovascular illness or trauma, appointed from a list submitted by the Oregon Medical Board.

(b) Four emergency medical technicians whose practices consist of routinely treating emergencies, including but not limited to cardiovascular illness or trauma, at least one of whom is at the lowest level of emergency medical technician certification established by the [*department*] **authority** at the time of appointment. EMTs appointed pursuant to this paragraph shall be selected from lists submitted by each area trauma advisory board. The lists shall include nominations from entities including but not limited to organizations that represent emergency care providers in Oregon.

(c) One volunteer ambulance operator, one person representing governmental agencies that provide ambulance services and one person representing a private ambulance company.

(d) One hospital administrator.

(e) One nurse who has served at least two years in the capacity of an emergency department nurse.

(f) One representative of an emergency dispatch center.

(g) One community college or licensed career school representative.

(2) The committee shall include at least one resident but no more than three residents from each region served by one area trauma advisory board at the time of appointment.

(3) Appointments shall be made for a term of four years in a manner to preserve insofar as possible the representation of the organization described in subsection (1) of this section. Vacancies shall be filled for any unexpired term as soon as the [*department*] **authority** can make such ap-

pointments. The committee shall choose its own chairperson and shall meet at the call of the chairperson or the [*department administrator*] **Director of the Oregon Health Authority**.

(4) The State Emergency Medical Service Committee shall:

(a) Advise the [*department*] **authority** concerning the adoption, amendment and repeal of rules authorized by this chapter;

(b) Assist the Emergency Medical Services and Trauma Systems Program in providing state and regional emergency medical services coordination and planning;

(c) Assist communities in identifying emergency medical service system needs and quality improvement initiatives;

(d) Assist the Emergency Medical Services and Trauma Systems Program in prioritizing, implementing and evaluating emergency medical service system quality improvement initiatives identified by communities;

(e) Review and prioritize rural community emergency medical service funding requests and provide input to the Rural Health Coordinating Council; and

(f) Review and prioritize funding requests for rural community emergency medical service training and provide input to the Area Health Education Center program.

(5) The chairperson of the committee shall appoint a subcommittee on EMT certification and discipline, consisting of five physicians and four EMTs. The subcommittee shall advise the [*department*] **authority** and the board on the adoption, amendment, repeal and application of rules concerning ORS 682.204 to 682.220 and 682.245. The decisions of this subcommittee shall not be subject to the review of the full State Emergency Medical Service Committee.

(6) Members are entitled to compensation as provided in ORS 292.495.

SECTION 1069. ORS 682.045 is amended to read:

682.045. (1) A license for an ambulance service or the operation of ambulance vehicles shall be obtained from the [*Department of Human Services*] **Oregon Health Authority**.

(2) Applications for licenses shall be upon forms prescribed by the [*department*] **authority** and shall contain:

(a) The name and address of the person or governmental unit owning the ambulance service or vehicle.

(b) If other than the applicant's true name, the name under which the applicant is doing business.

(c) In the case of an ambulance vehicle, a description of the ambulance, including the make, model, year of manufacture, registration number and the insignia name, monogram or other distinguishing characteristics to be used to designate the applicant's ambulance vehicles.

(d) The location and description of the principal place of business of the ambulance service, and the locations and descriptions of the place or places from which its ambulance is intended to operate.

(e) Such other information as the [*department*] **authority** may reasonably require to determine compliance with ORS 820.350 to 820.380 and this chapter and the rules adopted thereunder.

(3) Except in the case of governmental units, the application shall be accompanied by future responsibility filing of the type described under ORS 806.270.

SECTION 1070. ORS 682.047 is amended to read:

682.047. (1) When applications have been made as required under ORS 682.045, the [*Department of Human Services*] **Oregon Health Authority** shall issue licenses to the owner if it is found that the ambulance service and ambulance comply with the requirements of ORS 820.350 to 820.380 and this chapter and the rules adopted thereunder.

(2) Each license unless sooner suspended or revoked shall expire on the next June 30 or on such date as may be specified by [*department*] **authority** rule.

(3) The [*department*] **authority** may initially issue a license for less than a 12-month period or for more than a 12-month period not to exceed 15 months.

(4) Licenses shall be issued only to the owner of the ambulance service and only for the ambulance named in the application and shall not be transferable to any other person, governmental unit, ambulance service or ambulance.

(5) Licenses shall be displayed as prescribed by the rules of the [department] **authority**.

(6) The [department] **authority** shall provide for the replacement of any current license that becomes lost, damaged or destroyed. A replacement fee of \$10 shall be charged for each replacement license.

(7) Nonrefundable fees in the following amounts shall accompany each initial and each subsequent annual application to obtain a license to operate an ambulance service and ambulance:

(a) \$75 for an ambulance service having a maximum of four full-time paid positions;

(b) \$250 for an ambulance service having five or more full-time paid positions;

(c) \$45 for each ambulance license if the ambulance is owned and operated by an ambulance service that has a maximum of four full-time paid positions; and

(d) \$80 for each ambulance license if the ambulance is owned and operated by an ambulance service having five or more full-time paid positions.

(8) The fees established under subsection (7) of this section do not apply to an ambulance or vehicle described under ORS 682.035.

SECTION 1071. ORS 682.051 is amended to read:

682.051. (1) A person or governmental unit commits the offense of unlawful operation of an unlicensed ambulance [if, on and after July 1, 1983,] or the offense of unlawful operation of an unlicensed ambulance service if, on and after July 1, 1994, the person or governmental unit advertises or operates in this state a motor vehicle, aircraft or watercraft ambulance that:

(a) Is not operated by an ambulance service licensed under this chapter;

(b) Is not licensed under this chapter; and

(c) Does not meet the minimum requirements established under this chapter by the [Department of Human Services] **Oregon Health Authority** in consultation with the State Emergency Medical Service Committee for that type of ambulance.

(2) As used in this section, "governmental unit" and "person" have the meaning given those terms in ORS 682.025.

(3) This section does not apply to any ambulance or any person if the ambulance or person is exempted by ORS 682.035 or 682.079 from regulation by the [Department of Human Services] **authority**.

(4) Authority of political subdivisions to regulate ambulance services or to regulate or allow the use of ambulances is limited under ORS 682.031.

(5) The offense described in this section, unlawful operation of an unlicensed ambulance or ambulance service, is a Class A misdemeanor. Each day of continuing violation shall be considered a separate offense.

(6) In addition to the penalties prescribed by subsection (5) of this section, the [Department of Human Services] **authority** may impose upon a licensed ambulance service a civil penalty not to exceed \$5,000 for each violation of this chapter and the rules adopted thereunder. Each day of continuing violation shall be considered a separate violation for purposes of this subsection.

SECTION 1072. ORS 682.056 is amended to read:

682.056. (1) Upon the request of the designated official of an ambulance service as defined in ORS 682.051, a first responder as defined in ORS 682.025, the emergency medical services system authority in the county in which a prehospital care event occurred or the [Department of Human Services] **Oregon Health Authority**, a hospital licensed under ORS chapter 441 may provide to the requester the following information:

(a) The disposition of the person who was the subject of the prehospital care event from the emergency department or other intake facility of the hospital, including but not limited to:

(A) Whether the person was admitted to the hospital; and

(B) If the person was admitted, to what unit the person was assigned;

(b) The diagnosis given the person in the emergency department or other intake facility; and

(c) Whether within the first hour after the person arrived at the hospital, the person received one or more medical procedures on a list that the [Department of Human Services] **authority** shall establish by rule.

(2) Information provided pursuant to subsection (1) of this section shall be:

(a) Treated as a confidential medical record and not disclosed;

(b) Considered privileged data under ORS 41.675 and 41.685; and

(c) Used only for legitimate medical quality assurance and quality improvement activities.

(3) A hospital may charge a fee reasonably related to the actual cost of providing the information requested pursuant to this section.

(4) For purposes of this section, “emergency medical services system” has the meaning given in ORS 41.685.

SECTION 1073. ORS 682.062 is amended to read:

682.062. (1) Each county shall develop a plan for the county or two or more contiguous counties may develop a plan relating to the need for and coordination of ambulance services and establish one or more ambulance service areas consistent with the plan for the efficient and effective provision of ambulance services.

(2) Each person, city or rural fire protection district within the county that provides or desires to provide ambulance services shall notify the county in writing if the person, city or district wants to be consulted prior to the adoption or amendment of a county plan for ambulance services.

(3) Prior to adopting or amending a plan under subsection (1) of this section, a county shall notify each person, city or district that notified the county under subsection (2) of this section of its desire to be consulted. The county governing body shall consult with and seek advice from such persons, cities and districts with regard to the plan and to the boundaries of any ambulance service areas established under the plan. After such consultation, the county shall adopt or amend a plan in the same manner as the county enacts nonemergency ordinances.

(4) Any plan developed and any service area established pursuant to subsection (1) of this section shall be submitted to the [Department of Human Services] **Oregon Health Authority**.

(5) The [department] **authority**, in consultation with the appropriate bodies specified in subsection (1) of this section, shall adopt rules pursuant to ORS chapter 183 that specify those subjects to be addressed and considered in any plan for ambulance services and areas under subsection (1) of this section and those subjects to be addressed and considered in the adoption of any such plan. The rules shall be uniform, as far as practicable, but take into consideration unique circumstances of local districts.

(6) The [department] **authority** shall review a plan submitted under subsection (4) of this section for compliance with the rules of the [department] **authority** adopted under subsection (5) of this section. Not later than 60 days after receiving the plan, the [department] **authority** shall approve the plan if it complies with the rules or disapprove the plan. The [department] **authority** shall give written notice of such action to the county and, when a plan is not approved, the notice shall indicate specifically how the plan does not comply with the rules of the [department] **authority**. The county shall modify the plan to comply with the rules and shall submit the modified plan to the [department] **authority** for review under this subsection.

(7) The rules adopted under subsection (5) of this section shall be enforceable by the [department] **authority** in a proceeding in circuit court for equitable relief.

(8) This section does not require a county to establish more than one ambulance service area within the county.

SECTION 1074. ORS 682.068 is amended to read:

682.068. (1) The [Department of Human Services] **Oregon Health Authority**, in consultation with the State Emergency Medical Service Committee, shall adopt rules specifying minimum requirements for ambulance services, and for staffing and medical and communications equipment requirements for all types of ambulances. The rules shall define the requirements for advanced life support and basic life support units of emergency vehicles, including equipment and emergency medical techni-

cian staffing of the passenger compartment when a patient is being transported in emergency circumstances.

(2) The [department] **authority** may waive any of the requirements imposed by this chapter in medically disadvantaged areas as determined by the Director of [Human Services] **the Oregon Health Authority**, or upon a showing that a severe hardship would result from enforcing a particular requirement.

(3) The [department] **authority** shall exempt from rules adopted under this section air ambulances that do not charge for the provision of ambulance services.

SECTION 1075. ORS 682.075 is amended to read:

682.075. (1) Subject to any law or rule pursuant thereto relating to the construction or equipment of ambulances, the [Department of Human Services] **Oregon Health Authority** shall, with the advice of the State Emergency Medical Service Committee appointed under ORS 682.039 and in accordance with ORS chapter 183, adopt and when necessary amend or repeal rules relating to the construction, maintenance, capacity, sanitation, emergency medical supplies and equipment of ambulances.

(2) In order for an owner to secure and retain a license for an ambulance under this chapter, it shall meet the requirements imposed by rules of the [department] **authority**. The requirements may relate to construction, maintenance, capacity, sanitation and emergency medical supplies and equipment on ambulances. Such requirements shall include, but are not limited to, requirements relating to space in patient compartments, access to patient compartments, storage facilities, operating condition, cots, mattresses, stretchers, cot and stretcher fasteners, bedding, oxygen and resuscitation equipment, splints, tape, bandages, tourniquets, patient convenience accessories, cleanliness of vehicle and laundering of bedding.

SECTION 1076. ORS 682.079 is amended to read:

682.079. (1) The [Department of Human Services] **Oregon Health Authority** may grant exemptions or variances from one or more of the requirements of ORS 820.330 to 820.380 or this chapter or the rules adopted thereunder to any class of vehicles if it finds that compliance with such requirement or requirements is inappropriate because of special circumstances which would render compliance unreasonable, burdensome or impractical due to special conditions or cause, or because compliance would result in substantial curtailment of necessary ambulance service. Such exemptions or variances may be limited in time or may be conditioned as the [department] **authority** considers necessary to protect the public welfare.

(2) In determining whether or not a variance shall be granted, the advice of the State Emergency Medical Service Committee shall be received and in all cases the equities involved and the advantages and disadvantages to the welfare of patients and the owners of vehicles shall be weighed by the [department] **authority**.

(3) Rules under this section shall be adopted, amended or repealed in accordance with ORS 183.330.

SECTION 1077. ORS 682.085 is amended to read:

682.085. (1) The [Department of Human Services] **Oregon Health Authority** or its authorized representatives may at reasonable times inspect ambulances and ambulance services licensed or subject to being licensed under this chapter.

(2) The [department] **authority** may suspend or revoke a license if the ambulance service owner fails to take corrective action required pursuant to an inspection of an ambulance or ambulance service under this section.

SECTION 1078. ORS 682.105 is amended to read:

682.105. (1) In order to secure and retain a license under this chapter, the owner of an ambulance or ambulance service, other than a governmental unit, shall file and maintain with the [Department of Human Services] **Oregon Health Authority** proof of ability to respond in damages for liability arising from the ownership, operation, use or maintenance of the ambulance, or arising from the delivery of prehospital care, in the amount of:

(a) \$100,000 because of bodily injury to or death of one person in any one accident;

(b) Subject to that limit for one person, \$300,000 because of bodily injury to or death of two or more persons in any one accident;

(c) \$20,000 because of injury to or destruction of the property of others in any one accident; and

(d) \$500,000 because of injury arising from the negligent provision of prehospital care to any individual.

(2) Proof of financial responsibility under subsection (1) of this section may be given by filing with the [department] **authority**, for the benefit of the owner:

(a) A certificate of insurance issued by an insurance carrier licensed to transact insurance in this state showing that the owner has procured and that there is in effect a motor vehicle liability policy for the limits of financial responsibility mentioned in subsection (1)(a) to (c) of this section designating by explicit description all motor vehicles with respect to which coverage is granted thereby and insuring the named insured and all other persons using any such motor vehicle with insured's consent against loss from the liabilities imposed by law for damages arising out of the ownership, operation, use or maintenance of any such motor vehicle, and that there is in effect a professional liability policy for the limit of financial responsibility described in subsection (1)(d) of this section insuring the named insured and all other persons engaged in the provision of prehospital care under the auspices of the licensed ambulance service against loss from the liabilities imposed by law for damages arising out of the provision of prehospital care;

(b) A bond conditioned for the paying in behalf of the principal, the limits of financial responsibility mentioned in subsection (1) of this section; or

(c) A certificate of the State Treasurer that such owner has deposited with the State Treasurer the sum of \$320,000 in cash, in the form of an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or in securities such as may legally be purchased by fiduciaries or for trust funds of a market value of \$320,000.

SECTION 1079. ORS 682.107 is amended to read:

682.107. (1) When insurance is the method chosen to prove financial responsibility, the certificate of insurance shall be signed by an authorized company representative and shall contain the following information:

(a) The date on which the policy was issued.

(b) The name and address of the named insured.

(c) The policy number.

(d) The amount of coverage in terms of the liability limits stated in ORS 682.105.

(2) The policy of insurance for which the certificate is given shall not be canceled or terminated except upon the giving of 10 days' prior written notice to the [Department of Human Services] **Oregon Health Authority**. However, an insurance policy subsequently procured and certified to the [department] **authority** shall, on the date the certificate is filed with the [department] **authority**, terminate the insurance previously certified with respect to any owner or vehicle designated in both certificates.

(3) The vehicle policy need not insure any liability under any worker's compensation, nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment of the insured, or while engaged in the operation, maintenance or repair of a vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(4) The requirements for a vehicle liability policy and certificate of insurance may be fulfilled by the policies and certificates of one or more insurance carriers which policies and certificates together meet such requirements.

SECTION 1080. ORS 682.109 is amended to read:

682.109. ORS 682.111 to 682.117 apply to a bond, letter of credit or certificate evidencing deposit with the [Department of Human Services] **Oregon Health Authority** that is the method chosen to prove financial responsibility under this chapter. The dollar amounts required for the bonds, letters of credit or deposits shall be \$320,000.

SECTION 1081. ORS 682.111 is amended to read:

682.111. A bond used to comply with financial responsibility requirements under this chapter must meet all of the following requirements:

- (1) The bond must be in the amount required by ORS 682.109.
- (2) The bond must be approved by a judge of a court of record in this state.
- (3) The bond must contain a provision that it cannot be canceled except upon the giving of 10 days' prior written notice to the [Department of Human Services] **Oregon Health Authority**.
- (4) The bond must be provided by either of the following:
 - (a) A surety company.
 - (b) Two persons who are residents of Oregon and who each own real property in this state having together equities at least of the value required for the bond under ORS 682.109.
- (5) If the bond is provided by real property owners in this state, the bond must contain a schedule of the real property owned by each of the sureties that will be used to meet the financial responsibility requirements of this chapter.
- (6) The bond must be conditioned to pay, on behalf of the principal, the limits of financial responsibility requirements under this chapter.
- (7) The bond must be conditioned to pay, on behalf of the principal, judgments against a person for liability described in ORS 682.105 and must be subject to action under ORS 682.113.
- (8) The bond is subject to any rules adopted by the [department] **authority** relating to such bonds.

SECTION 1082. ORS 682.117 is amended to read:

682.117. (1) A person may satisfy the financial responsibility requirements of ORS 682.105 by depositing with the [Department of Human Services] **Oregon Health Authority** the following:

- (a) Cash;
 - (b) Legally issued general obligations of the United States, the agencies and instrumentalities of the United States and the States of Oregon, Washington, Idaho and California;
 - (c) Certificates of deposit or other similar instruments if the instruments are insured by the Federal Deposit Insurance Corporation; or
 - (d) Any combination of cash or instruments described in this subsection.
- (2) The [department] **authority** shall hold the deposit under terms and conditions that the [department] **authority** designates by rule. The [department] **authority** may deliver the deposit to the State Treasurer, who shall receive and hold the deposit subject to the order of the [department] **authority**. The depositor shall reimburse the State Treasurer for any expenses incurred by the State Treasurer in mailing, insuring, shipping or delivering the cash or instruments in the deposit.

(3) The [department] **authority**, by order, may authorize the State Treasurer to use the deposit as follows:

(a) To satisfy any execution on a judgment that is against the person making the deposit for any liability described in ORS 682.105 and that results from a cause of action that accrued after the deposit was made; or

(b) To release any or all of the deposit to the depositor or other person as the [department] **authority** considers appropriate.

(4) While deposited with the [department] **authority**, the cash or instruments in the deposit are not subject to attachment or execution unless the attachment or execution arises out of a judgment against the person making the deposit for any liability described in ORS 682.105 and that results from a cause of action that accrued after the deposit was made.

(5) The [department] **authority** shall issue the depositor a certificate evidencing the deposit.

SECTION 1083. ORS 682.208 is amended to read:

682.208. (1) For any person to be certified as an emergency medical technician or first responder, an application for certification shall be made to the [Department of Human Services] **Oregon Health Authority**. The application shall be upon forms prescribed by the [department] **authority** and shall contain:

- (a) The name and address of the applicant.

(b) The name and location of the training course successfully completed by the applicant and the date of completion.

(c) Certification that to the best of the applicant's knowledge the applicant is physically and mentally qualified to act as an emergency medical technician or first responder, is free from addiction to controlled substances or alcoholic beverages, or if not so free, has been and is currently rehabilitated and is free from epilepsy or diabetes, or if not so free, has been free from any lapses of consciousness or control occasioned thereby for a period of time as prescribed by rule of the [department] **authority**.

(d) Such other information as the [department] **authority** may reasonably require to determine compliance with applicable provisions of this chapter and the rules adopted thereunder.

(2) The application shall be accompanied by proof as prescribed by rule of the [department] **authority** of the applicant's successful completion of a training course approved by the [department] **authority**, and if an extended period of time has elapsed since the completion of the course, of a satisfactory amount of continuing education.

(3) The [department] **authority** shall adopt a schedule of minimum educational requirements in emergency and nonemergency care for emergency medical technicians and first responders. The [department] **authority**, with the advice of the State Emergency Medical Service Committee, may establish levels of emergency medical technician certification as may be necessary to serve the public interest. A course approved by the [department] **authority** shall be designed to protect the welfare of out-of-hospital patients, to promote the health, well-being and saving of the lives of such patients and to reduce their pain and suffering.

SECTION 1084. ORS 682.212 is amended to read:

682.212. (1) A nonrefundable initial application fee shall be submitted with the initial application for emergency medical technician and first responder certification. In addition, a nonrefundable examination fee shall be submitted for the following purposes:

- (a) First responder written examination;
- (b) Emergency medical technician written examination;
- (c) Emergency medical technician practical examination; and

(d) A fee deemed necessary by the [Department of Human Services] **Oregon Health Authority** to cover the fee charged by the national examination agency or other examination service utilized by the [department] **authority** for the purpose of examining candidates for emergency medical technician certification.

(2) Subject to the review of the Oregon Department of Administrative Services, the fees and charges established under this section shall not exceed the cost of administering the regulatory program of the [Department of Human Services] **authority** pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly for the [department's] **authority's** budget, as the budget may be modified by the Emergency Board.

(3) All moneys received by the [department] **authority** under this chapter shall be paid into the General Fund in the State Treasury and placed to the credit of the [department] **authority** account and such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of this chapter.

SECTION 1085. ORS 682.216 is amended to read:

682.216. (1) When application has been made as required under ORS 682.208, the [Department of Human Services] **Oregon Health Authority** shall certify the applicant as an emergency medical technician or as a first responder if it finds:

(a) The applicant has successfully completed a training course approved by the [department] **authority**.

(b) The applicant's physical and mental qualifications have been certified as required under ORS 682.208.

(c) No matter has been brought to the attention of the [department] **authority** which would disqualify the applicant.

(d) A nonrefundable fee has been paid to the [department] **authority** pursuant to ORS 682.212.

(e) The applicant for emergency medical technician certification is 18 years of age or older and the applicant for first responder is 16 years of age or older.

(f) The applicant has successfully completed examination as prescribed by the [department] **authority**.

(g) The applicant meets other requirements prescribed by rule of the [department] **authority**.

(2) The [department] **authority** may provide for the issuance of a provisional certification for emergency medical technicians.

(3) The [department] **authority** may issue by indorsement certification for emergency medical technician without proof of completion of an approved training course to an emergency medical technician who is licensed to practice emergency care in another state of the United States or a foreign country if, in the opinion of the [department] **authority**, the applicant meets the requirements of certification in this state and can demonstrate to the satisfaction of the [department] **authority** competency to practice emergency care. The [department] **authority** shall be the sole judge of credentials of any emergency medical technician applying for certification without proof of completion of an approved training course.

(4) Each person holding a certificate under ORS 682.208 and this section shall submit, at the time of application for renewal of the certificate to the [department] **authority**, evidence of the applicant's satisfactory completion of [a department] **an authority** approved program of continuing education and other requirements prescribed by rule by the [department] **authority**.

(5) The [department] **authority** shall prescribe criteria and approve programs of continuing education in emergency and nonemergency care to meet the requirements of this section.

(6) The [department] **authority** shall include a fee pursuant to ORS 682.212 for late renewal and for issuance of any duplicate certificate. Each certification issued under this section, unless sooner suspended or revoked, shall expire and be renewable after a period of two years. Each certificate must be renewed on or before June 30 of every second year or on or before such date as may be specified by [department] **authority** rule. The [department] **authority** by rule shall establish a schedule of certificate renewals under this subsection and shall prorate the fees to reflect any shorter certificate period.

(7) Nothing in this chapter authorizes an emergency medical technician or first responder to operate an ambulance without a driver license as required under the Oregon Vehicle Code.

SECTION 1086. ORS 682.220 is amended to read:

682.220. (1) The [Department of Human Services] **Oregon Health Authority** may deny, suspend or revoke licenses for ambulances and ambulance services in accordance with the provisions of ORS chapter 183 for a failure to comply with any of the requirements of ORS 820.350 to 820.380 and this chapter or the rules adopted thereunder.

(2) The certification of an emergency medical technician may be denied, suspended or revoked in accordance with the provisions of ORS chapter 183 for any of the following reasons:

(a) A failure to have completed successfully [a department] **an authority** approved course.

(b) In the case of provisional certifications, failure to have completed successfully [a department] **an authority** approved course.

(c) Failure to meet or continue to meet the physical and mental qualifications required to be certified under ORS 682.208.

(d) The use of fraud or deception in receiving a certificate.

(e) Practicing skills beyond the scope of practice established by the Oregon Medical Board under ORS 682.245.

(f) Rendering emergency or nonemergency care under an assumed name.

(g) The impersonation of another EMT.

(h) Unprofessional conduct.

(i) Obtaining a fee by fraud or misrepresentation.

(j) Habitual or excessive use of intoxicants or drugs.

(k) The presence of a mental disorder that demonstrably affects an EMT's performance, as certified by two psychiatrists retained by the [department] **authority**.

(L) Subject to ORS 670.280, conviction of any criminal offense that reasonably raises questions about the ability of the EMT to perform the duties of an EMT in accordance with the standards established by this chapter. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

(m) Suspension or revocation of an emergency medical technician certificate issued by another state:

(A) For a reason that would permit the [department] **authority** to suspend or revoke a certificate issued under this chapter; and

(B) Evidenced by a certified copy of the order of suspension or revocation.

(n) Gross negligence or repeated negligence in rendering emergency medical assistance.

(o) Rendering emergency or nonemergency care without being certified except as provided in ORS 30.800.

(p) Rendering emergency or nonemergency care as an EMT without written authorization and standing orders from a supervising physician who has been approved by the board in accordance with ORS 682.245.

(q) Refusing an invitation for an interview with the [department] **authority** as specified in this section.

(3) The [department] **authority** may investigate any evidence that appears to show that an EMT certified by the [department] **authority** is or may be medically incompetent, guilty of unprofessional or dishonorable conduct or mentally or physically unable to safely function as an EMT. The [department] **authority** may investigate the off-duty conduct of an EMT to the extent that such conduct may reasonably raise questions about the ability of the EMT to perform the duties of an EMT in accordance with the standards established by this chapter. Upon receipt of a complaint about an EMT or applicant, the [department] **authority** shall conduct an investigation as described under ORS 676.165. An investigation shall be conducted in accordance with ORS 676.175.

(4) Any health care facility licensed under ORS 441.015 to 441.087 and 441.820, any medical or osteopathic physician licensed under ORS chapter 677, any owner of an ambulance licensed under this chapter or any EMT certified under this chapter shall report to the [department] **authority** any information the person may have that appears to show that an EMT is or may be medically incompetent, guilty of unprofessional or dishonorable conduct or mentally or physically unable to safely function as an EMT.

(5) If, in the opinion of the [department] **authority**, it appears that the information provided to it under provisions of this section is or may be true, the [department] **authority** may request an interview with the EMT. At the time the [department] **authority** requests an interview, the EMT shall be provided with a general statement of the issue or issues of concern to the [department] **authority**. The request shall include a statement of the procedural safeguards available to the EMT, including the right to end the interview on request, the right to have counsel present and the following statement: "Any action proposed by the [Department of Human Services] **Oregon Health Authority** shall provide for a contested case hearing."

(6) Information regarding an ambulance service provided to the [department] **authority** pursuant to this section is confidential and shall not be subject to public disclosure, nor shall it be admissible as evidence in any judicial proceeding. Information that the [department] **authority** obtains as part of an investigation into emergency medical technician or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving emergency medical technician or applicant conduct is confidential as provided under ORS 676.175. Information regarding an ambulance service does not become confidential due to its use in a disciplinary proceeding against an emergency medical technician.

(7) Any person who reports or provides information to the [department] **authority** under this section and who provides information in good faith shall not be subject to an action for civil damage as a result thereof.

(8) In conducting an investigation under subsection (3) of this section, the [department] **authority** may:

- (a) Take evidence;
 - (b) Take depositions of witnesses, including the person under investigation, in the manner provided by law in civil cases;
 - (c) Compel the appearance of witnesses, including the person under investigation, in the manner provided by law in civil cases;
 - (d) Require answers to interrogatories; and
 - (e) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation.
- (9) The [department] **authority** may issue subpoenas to compel compliance with the provisions of subsection (8) of this section. If any person fails to comply with a subpoena issued under this subsection, or refuses to testify on matters on which the person may lawfully be interrogated, a court may compel obedience as provided in ORS 183.440.

SECTION 1087. ORS 682.224 is amended to read:

682.224. (1) The [Department of Human Services] **Oregon Health Authority** may discipline, as provided in this section, an ambulance service or any person certified as an emergency medical technician or first responder in this state who has:

(a) Admitted the facts of a complaint which alleges facts which establish that such person is guilty of violation of one or more of the grounds for suspension or revocation of a certificate as set forth in ORS 682.220 or that an ambulance service has violated the provisions of this chapter or the rules adopted thereunder.

(b) Been found guilty in accordance with ORS chapter 183 of violation of one or more of the grounds for suspension or revocation of certification as set forth in ORS 682.220 or that an ambulance service has violated the provisions of this chapter or the rules adopted thereunder.

(2) The purpose of disciplining an EMT under this section is to ensure that the EMT will provide services that are consistent with the obligations of this chapter. Prior to taking final disciplinary action, the [department] **authority** shall determine if the EMT has been disciplined for the questioned conduct by the EMT's employer or supervising physician. The [department] **authority** shall consider any such discipline or any other corrective action in deciding whether additional discipline or corrective action by the [department] **authority** is appropriate.

(3) In disciplining an EMT or ambulance service as authorized by subsection (1) of this section, the [department] **authority** may use any or all of the following methods:

- (a) Suspend judgment.
- (b) Issue a letter of reprimand.
- (c) Issue a letter of instruction.
- (d) Place the EMT or ambulance service on probation.
- (e) Suspend the EMT certificate or ambulance service license.
- (f) Revoke the EMT certificate or ambulance service license.
- (g) Place limitations on the certificate of the EMT to practice emergency or nonemergency care in this state or place limitations on the license of the ambulance service.
- (h) Take such other disciplinary action as the [department] **authority** in its discretion finds proper, including assessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil penalty not to exceed \$5,000, or both.

(4) In addition to the action authorized by subsection (3) of this section, the [department] **authority** may temporarily suspend a certificate or license without a hearing, simultaneously with the commencement of proceedings under ORS chapter 183 if the [department] **authority** finds that evidence in its possession indicates that a continuation in practice of the EMT or operation of the ambulance service constitutes an immediate danger to the public.

(5) If the [department] **authority** places any EMT or ambulance service on probation as set forth in subsection (3)(d) of this section, the [department] **authority** may determine, and may at any time modify, the conditions of the probation and may include among them any reasonable condition for the purpose of protection of the public and for the purpose of the rehabilitation of the EMT or

ambulance service, or both. Upon expiration of the term of probation, further proceedings shall be abated if the EMT or ambulance service has complied with the terms of the probation.

(6) If an EMT certified in this state is suspended, the holder of the certificate may not practice during the term of suspension.

(7) If an ambulance service licensed in this state is suspended, the ambulance service may not operate in this state during the term of the suspension, provided that the [department] **authority** shall condition such suspension upon such arrangements as may be necessary to [assure] **ensure** the continued availability of ambulance service in the area served by that ambulance service. Upon expiration of the term of suspension, the certificate or license shall be reinstated by the [department] **authority** if the conditions for which the certificate or license was suspended no longer exist.

(8) Whenever an EMT certificate or ambulance service license is denied or revoked for any cause, the [department] **authority** may, in its discretion, after the lapse of two years from the date of such revocation, upon written application by the person formerly certified or licensed and after a hearing, issue or restore the EMT certificate or ambulance service license.

(9) Civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 1088. ORS 682.245 is amended to read:

682.245. (1) The Oregon Medical Board shall adopt by rule a scope of practice for emergency medical technicians at such levels as may be established by the [Department of Human Services] **Oregon Health Authority** and for first responders.

(2) The board shall adopt by rule standards for the qualifications and responsibilities of supervising physicians.

(3) The standing orders for emergency medical technicians and first responders may not exceed the scope of practice defined by the board.

(4) No emergency medical technician shall provide patient care or treatment without written authorization and standing orders from a supervising physician who has been approved by the board.

(5) The policies and procedures for applying and enforcing this section may be delegated in whole or in part to the [department] **authority**.

SECTION 1089. ORS 682.991 is amended to read:

682.991. (1) Violation of any provision of ORS 682.028, 682.047 (5) or 682.204 is a Class A misdemeanor. Each day of continuing violation shall be considered a separate offense.

(2) Violation of any provision of this chapter is a misdemeanor. In any prosecution for such violation it shall be sufficient to sustain a conviction to show a single act of conduct in violation of any of the provisions of this chapter and it shall not be necessary to show a general course of such conduct.

(3) In addition to the penalties under this section, the [Department of Human Services] **Oregon Health Authority** may assess civil penalties of up to \$5,000 per violation against any entity or person licensed under this chapter or subject to licensure under this chapter.

SECTION 1090. ORS 685.055 is amended to read:

685.055. The Director of [Human Services shall] **the Oregon Health Authority** may not discriminate between licensed naturopathic physicians and any other person authorized by law to render professional services that a licensed naturopathic physician may render, when such services are required. If the [Department of Human Services] **Oregon Health Authority** is responsible for paying for such services, the services shall be paid for in the same manner and under the same standards as similar professional services.

SECTION 1091. ORS 685.160 is amended to read:

685.160. (1) There hereby is created the Board of Naturopathic Examiners in the [Department of Human Services] **Oregon Health Authority**. The board shall consist of seven members appointed by the Governor for terms of three years commencing July 1, and until their successors are appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the un-

expired term. All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(2) Of the membership of the Board of Naturopathic Examiners:

(a) All members must be citizens of this state.

(b) Five members shall be naturopaths who have each practiced continuously in this state for the five years immediately prior to the date of appointment.

(c) Two shall be members of the general public who do not possess the qualifications set forth in paragraph (b) of this subsection.

(3) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.

SECTION 1092. ORS 688.545 is amended to read:

688.545. (1)(a) There is created in the [*Department of Human Services*] **Oregon Health Authority** a Board of Radiologic Technology consisting of nine members who shall be appointed by the Governor. Each member of the board shall be a citizen of the United States and a resident of the State of Oregon. Each appointed member is entitled to vote.

(b) Of the members of the board:

(A) One shall be a radiologist;

(B) At least one shall be a lay person;

(C) At least one shall be a limited permit holder; and

(D) At least five shall be licensed practicing radiologic technologists, one of whom shall be a radiation therapist.

(2) The section manager of the Radiation Protection Services Section of the [*Department of Human Services*] **Oregon Health Authority**, or a person appointed by the section manager, shall be an advisory member of the board for the purpose of providing counsel and shall not be entitled to vote.

(3) The term of office of the members of the board shall be three years and a member may be reappointed to serve not more than two full terms.

(4) Members of the board shall be entitled to compensation and expenses as provided in ORS 292.495.

(5) The board shall annually elect a board chairperson and a vice chairperson from the members of the board.

(6) For the purpose of transacting its business, the board shall meet at least once every three months at times and places designated by resolution. Special meetings may also be held at such times as the board may elect or at the call of the chairperson. Notification of the time, place and purpose of any special meeting shall be sent to all members of the board at least 15 days before the date of the meeting. All meetings are subject to ORS 192.610 to 192.690.

(7) Five members of the board shall constitute a quorum for the transaction of business at any meeting. Five affirmative votes shall be required to take action.

SECTION 1093. ORS 688.595 is amended to read:

688.595. The section manager of the Radiation Protection Services Section of the [*Department of Human Services*] **Oregon Health Authority** shall enforce the provisions of ORS 688.405 to 688.605 and shall conduct, under the direction of the Board of Radiologic Technology, inspections in furtherance of the purposes of ORS 688.405 to 688.605.

SECTION 1094. ORS 688.625 is amended to read:

688.625. As used in ORS 688.625 to 688.665:

(1) "Dialysis facility or center" means a place awarded conditional or unconditional status by the federal Centers for Medicare and Medicaid Services.

(2) "End stage renal disease" means a condition that requires either the replacement of kidney functions through renal transplantation or the permanent assistance of those functions through dialysis.

(3) "Hemodialysis technician" means a person certified by the [Department of Human Services] **Oregon Health Authority** under ORS 688.650.

SECTION 1095. ORS 688.630 is amended to read:

688.630. [After January 1, 2000, it is unlawful:]

(1) **It is unlawful** for any person to act as a hemodialysis technician without being certified by the [Department of Human Services] **Oregon Health Authority**.

(2) **It is unlawful** for any dialysis facility or center to authorize a person to act for it as a hemodialysis technician without being certified by the [department] **authority**.

SECTION 1096. ORS 688.635 is amended to read:

688.635. (1) A person certified as a hemodialysis technician may, under the direct supervision of a physician licensed under ORS chapter 677 or a registered nurse licensed under ORS 678.010 to 678.410, perform functions as determined by rules adopted by the [Department of Human Services] **Oregon Health Authority**, in consultation with the Oregon Medical Board and the Oregon State Board of Nursing.

(2) A hemodialysis technician shall not:

(a) Administer medications by oral, intramuscular, intravenous or subcutaneous means except as specified under rules adopted by the [department] **authority** pursuant to subsection (1) of this section.

(b) Determine the frequency, duration or nature of dialysis treatments or alter any treatment prescribed by a licensed health professional.

(c) Engage in any health care activity requiring a license except as authorized under rules adopted by the [department] **authority** pursuant to subsection (1) of this section.

SECTION 1097. ORS 688.640 is amended to read:

688.640. (1) For any person to be certified as a hemodialysis technician, an application for certification shall be made to the [Department of Human Services] **Oregon Health Authority**. The application shall be upon forms prescribed by the [department] **authority** and shall contain:

(a) The name and address of the applicant.

(b) The name and location of the training course successfully completed by the applicant and the date of completion and, if an extended period of time has elapsed since the completion of the training, of the required amount of continuing education.

(c) Such other information as the [department] **authority** may reasonably require to determine compliance with applicable provisions of ORS 688.625 to 688.665 and the rules adopted thereunder.

(2) The [department] **authority**, in consultation with the Oregon Medical Board and the Oregon State Board of Nursing, shall adopt rules establishing initial training and continuing education requirements.

SECTION 1098. ORS 688.645 is amended to read:

688.645. (1) An initial application fee shall be submitted with the application for hemodialysis technician certification. If the applicant is taking an examination administered by the [Department of Human Services] **Oregon Health Authority**, an additional fee shall be charged for the examination.

(2) The [department] **authority** may charge a fee for late renewal of a certificate and for issuance of any duplicate certificate.

(3) Subject to the review of the Oregon Department of Administrative Services, the fees and charges established under this section shall not exceed the cost of administering the certification program of the [Department of Human Services] **authority** pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly for the [Department of Human Services]' **authority's** budget, as the budget may be modified by the Emergency Board.

(4) All moneys received by the [department] **authority** under ORS 688.625 to 688.665 shall be paid into the General Fund in the State Treasury and placed to the credit of the [department] **authority** account and such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 688.625 to 688.665.

SECTION 1099. ORS 688.650 is amended to read:

688.650. (1) When application has been made as required under ORS 688.640, the [Department of Human Services] **Oregon Health Authority** shall certify the applicant as a hemodialysis technician if it finds:

(a) The applicant has successfully completed the training requirement adopted by the [department] **authority**.

(b) A fee has been paid to the [department] **authority** pursuant to ORS 688.645.

(c) The applicant has successfully completed an examination administered by the [department] **authority** or administered by another public or private entity and approved by the [department] **authority**.

(d) The applicant meets any other requirements prescribed by rule of the [department] **authority**.

(2) The [department] **authority** may provide for the issuance of a temporary or provisional certification for a person to practice as a hemodialysis technician until the person has taken and passed the next held certification examination available to the person and has received a certificate. The [department] **authority** may impose any conditions or limitations on a temporary or provisional certificate that the [department] **authority** considers reasonable and necessary to protect the public. A temporary or provisional certificate may be held only by a person who:

(a) Has not received a failing grade on a certification examination approved or administered by the [department] **authority**; and

(b)(A) Has successfully completed the initial training required by [department] **authority** rule; or

(B) Is currently working in this or another state as a hemodialysis technician and is enrolled in a program offering the initial training required by [department] **authority** rule.

(3) Each person holding a certificate under this section shall submit, at the time of application for renewal of the certificate to the [department] **authority**, evidence of the applicant's satisfactory completion of any continuing education requirements prescribed by rule by the [department] **authority**.

(4) The [department] **authority** shall prescribe criteria and approve programs of continuing education.

(5) Each certification issued under this section, unless sooner suspended or revoked, shall expire and be renewable after a period of two years. Each certificate must be renewed on or before June 30 of every second year or on or before such date as may be specified by [department rule. The department] **authority rule**. The **authority** by rule shall establish a schedule of certificate renewals under this subsection and shall prorate the fees to reflect any shorter certificate period.

SECTION 1100. ORS 688.655 is amended to read:

688.655. (1) The certification of a hemodialysis technician may be denied, suspended or revoked in accordance with the provisions of ORS chapter 183 for any of the following:

(a) Failure to complete continuing education requirements.

(b) The use of fraud or deception in receiving a certificate.

(c) Habitual or excessive use of intoxicants or drugs.

(d) The presence of a mental disorder that demonstrably affects a technician's performance, as certified by two psychiatrists retained by the [Department of Human Services] **Oregon Health Authority**.

(e) Conviction of a criminal offense that the [department] **authority** considers reasonably related to the fitness of the person to practice hemodialysis.

(f) Suspension or revocation of a hemodialysis technician certificate issued by another state.

(g) Gross negligence or repeated negligence in rendering hemodialysis care.

(h) Any reason identified by [department] **authority** rule as rendering the applicant unfit to perform the duties of a hemodialysis technician.

(2) The [department] **authority** may investigate any evidence that appears to show that a hemodialysis technician certified by the [department] **authority** is or may be medically incompetent

or is or may be guilty of unprofessional or dishonorable conduct or is or may be mentally or physically unable to safely function as a hemodialysis technician.

(3) Any dialysis facility or center, any hemodialysis technician certified under ORS 688.650, any physician licensed under ORS chapter 677 or any registered nurse licensed under ORS 678.010 to 678.410 shall report to the [department] **authority** any information the person may have that appears to show that a hemodialysis technician is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be mentally or physically unable to safely function as a hemodialysis technician.

(4) Information provided to the [department] **authority** pursuant to this section is confidential and shall not be subject to public disclosure, nor shall it be admissible as evidence in any judicial proceeding.

(5) Any person who reports or provides information to the [department] **authority** under this section and who provides information in good faith shall not be subject to an action for civil damage as a result thereof.

SECTION 1101. ORS 688.660 is amended to read:

688.660. (1) The [Department of Human Services] **Oregon Health Authority** may discipline a person certified as a hemodialysis technician who has:

(a) Admitted the facts of a complaint alleging the person is guilty of violation of one or more of the grounds for suspension or revocation of a certificate as set forth in ORS 688.655.

(b) Been found guilty in accordance with ORS chapter 183 of violation of one or more of the grounds for suspension or revocation of certification as set forth in ORS 688.655.

(2) In disciplining a technician, the [department] **authority** may use any or all of the following methods:

(a) Suspend judgment.

(b) Place the technician on probation.

(c) Suspend the technician's certificate.

(d) Revoke the technician's certificate.

(e) Place limitations on the ability of the technician to practice hemodialysis in this state.

(f) Take such other disciplinary action as the [department] **authority** in its discretion finds proper, including assessment of the costs of the disciplinary proceedings, not to exceed \$1,000, as a civil penalty or assessment of a civil penalty not to exceed \$1,000.

(3) In addition to the action authorized by subsection (2) of this section, the [department] **authority** may temporarily suspend a certificate or license without a hearing, simultaneously with the commencement of proceedings under ORS chapter 183, if the [department] **authority** finds that evidence in its possession indicates that a continuation in practice of the technician constitutes an immediate danger to the public.

(4) If the [department] **authority** places a technician on probation, the [department] **authority** may determine, and may at any time modify, the conditions of the probation and may include among them any reasonable condition for the purpose of protection of the public and for the purpose of the rehabilitation of the technician. Upon expiration of the term of probation, further proceedings shall be abated if the technician has complied with the terms of the probation.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 1102. ORS 688.665 is amended to read:

688.665. The [Department of Human Services] **Oregon Health Authority** shall adopt rules that the [department] **authority** considers necessary and proper to enforce ORS 688.625 to 688.665.

SECTION 1103. ORS 689.605 is amended to read:

689.605. (1) In a hospital or long term care facility having a pharmacy and employing a pharmacist, the pharmacy and pharmacist are subject to the requirements of this chapter, except that in a hospital when a pharmacist is not in attendance, pursuant to standing orders of the pharmacist, a registered nurse supervisor on the written order of a person authorized to prescribe a drug may withdraw such drug in such volume or amount as needed for administration to or treatment of an inpatient or outpatient until regular pharmacy services are available in accordance

with the rules adopted by the board. However, the State Board of Pharmacy may grant an exception to the requirement for a written order by issuing a special permit authorizing the registered nurse supervisor in a hospital to dispense medication on the oral order of a person authorized to prescribe a drug. An inpatient care facility which does not have a pharmacy must have a drug room. In an inpatient care facility having a drug room as may be authorized by rule of the Department of Human Services **or the Oregon Health Authority**, the drug room is not subject to the requirements of this chapter relating to pharmacies. However, a drug room must be supervised by a pharmacist and is subject to the rules of the State Board of Pharmacy. When a pharmacist is not in attendance, any person authorized by the prescriber or by the pharmacist on written order may withdraw such drug in such volume or amount as needed for administration to or treatment of a patient, entering such withdrawal in the record of the responsible pharmacist.

(2) In a hospital having a drug room, any drug may be withdrawn from storage in the drug room by a registered nurse supervisor on the written order of a licensed practitioner in such volume or amount as needed for administration to and treatment of an inpatient or outpatient in the manner set forth in subsection (1) of this section and within the authorized scope of practice.

(3) A hospital having a drug room shall cause accurate and complete records to be kept of the receipt, withdrawal from stock and use or other disposal of all legend drugs stored in the drug room. Such record shall be open to inspection by agents of the board and other qualified authorities.

(4) In an inpatient care facility other than a hospital, the drug room shall contain only prescribed drugs already prepared for patients therein and such emergency drug supply as may be authorized by rule by the Department of Human Services.

(5) The requirements of this section shall not apply to facilities described in ORS 441.065.

(6) A registered nurse who is an employee of a local health department established under the authority of a county or district board of health and registered by the board under ORS 689.305 may, pursuant to the order of a person authorized to prescribe a drug or device, dispense a drug or device to a client of the **local** health department for purposes of caries prevention, birth control or prevention or treatment of a communicable disease. Such dispensing shall be subject to rules jointly adopted by the board and the [*Department of Human Services*] **Oregon Health Authority**.

(7) The board shall adopt rules authorizing a pharmacist to delegate to a registered nurse the authority to withdraw prescription drugs from a manufacturer's labeled container for administration to persons confined in penal institutions including, but not limited to, adult and juvenile correctional facilities. A penal institution, in consultation with a pharmacist, shall develop policies and procedures regarding medication management, procurement and distribution. A pharmacist shall monitor a penal institution for compliance with the policies and procedures and shall perform drug utilization reviews. The penal institution shall submit to the board for approval a written agreement between the pharmacist and the penal institution regarding medication policies and procedures.

SECTION 1104. ORS 689.645 is amended to read:

689.645. (1) In accordance with rules adopted by the State Board of Pharmacy under ORS 689.205, a pharmacist may administer:

(a) Vaccines and immunizations to persons who are at least 18 years of age; and

(b) Influenza vaccines to persons who are at least 15 years of age.

(2) The board is authorized to issue, to licensed pharmacists who have completed training accredited by the Centers for Disease Control and Prevention, the American Council on Pharmaceutical Education or a similar health authority or professional body, certificates of special competency in the administration of vaccines and immunizations to persons more than 15 years of age.

(3) The board shall adopt rules relating to the reporting of the administration of vaccines and immunizations to a patient's primary health care provider and to the [*Department of Human Services*] **Oregon Health Authority**.

(4) The board shall adopt rules requiring pharmacists to establish protocols for the administration of vaccines and immunizations to persons who are at least 18 years of age and for the administration of influenza vaccines to persons who are at least 15 years of age.

(5) The board shall convene a volunteer Immunization and Vaccination Advisory Committee consisting of no more than nine members for the purpose of advising the board in promulgating rules under this section. The committee shall consist of one representative from the [*Department of Human Services*] **Oregon Health Authority**, two representatives from the Oregon Medical Board, two representatives from the Oregon State Board of Nursing and two representatives from the State Board of Pharmacy and no more than two pharmacists other than the representatives from the State Board of Pharmacy.

SECTION 1105. ORS 690.055 is amended to read:

690.055. (1) To be issued a license to operate a facility, each applicant shall:

(a) Be 18 years of age or older, if the applicant is a natural person.

(b) Comply with the rules of the Board of Cosmetology concerning health, safety and infection control.

(c) Comply with the applicable health and safety laws and rules of the [*Department of Human Services*] **Oregon Health Authority** and any other state agencies.

(d) Pay the required fees.

(e) If the applicant is an entity other than a natural person, be formed and operated in accordance with Oregon law.

(2) To be issued a temporary facility permit, each applicant must:

(a) Operate the facility on a temporary basis for a period not to exceed 30 consecutive calendar days and in accordance with rules of the board.

(b) Be 18 years of age or older, if the applicant is a natural person.

(c) Be under the direct supervision of a practitioner at all times the facility is open for business.

(d) Apply on forms prescribed by the Oregon Health Licensing Agency prior to opening for business.

(e) Comply with the rules of the board concerning health, safety and infection control.

(f) Comply with the applicable health and safety laws and rules of the [*Department of Human Services*] **Oregon Health Authority** and any other state agencies.

(g) Pay the appropriate application and permit fees.

(h) If the applicant is an entity other than a natural person, be formed and operated in accordance with Oregon law.

(3) The agency may issue a single facility license to an applicant pursuant to ORS 676.617.

(4) A license issued under this section shall confer on a facility owner the right to operate the facility and to advertise the services for which the facility is licensed.

(5) A facility must at all times be under the direct supervision of a practitioner.

SECTION 1106. ORS 690.057 is amended to read:

690.057. (1) To be issued a registration to operate as an independent contractor, each applicant shall:

(a) Be 18 years of age or older.

(b) Comply with the rules of the Board of Cosmetology concerning health, safety and infection control.

(c) Comply with the applicable health and safety laws and rules of the [*Department of Human Services*] **Oregon Health Authority** and any other state agencies.

(d) Pay the required fees.

(2) A registration shall confer the right to an independent contractor to advertise and directly offer practitioner services to the public in a licensed facility or a facility operating under a temporary facility permit.

SECTION 1107. ORS 690.205 is amended to read:

690.205. (1) The Board of Cosmetology may adopt rules for the administration of ORS 345.440 and 690.005 to 690.235 and for prescribing safety and infection control requirements for facilities. Infection control requirements for facilities shall be subject to the approval of the [*Department of Human Services*] **Oregon Health Authority**. A copy of the rules adopted by the board shall be furnished by the board to the owner or manager of each facility.

(2) Notwithstanding subsection (1) of this section, the board may not prohibit the use of the facility for domestic purposes if the part devoted to domestic purposes is in a completely separate room not used by customers, with walls extending from floor to ceiling and with any connecting doors kept closed while the facility is in actual operation.

(3) Rules adopted by the board prescribing safety and infection control requirements for facilities shall be adopted in accordance with the procedures set forth in ORS chapter 183.

SECTION 1108. ORS 691.405 is amended to read:

691.405. As used in ORS 691.405 to 691.585:

(1) "American Dietetic Association" means the national professional organization of dietitians that provides direction and leadership for quality dietetic practice, education and research.

(2) "**Authority**" means the **Oregon Health Authority**.

[2] (3) "Board" means the Board of Examiners of Licensed Dietitians established under ORS 691.485.

[3] (4) "Commission on Dietetic Registration" means the commission on dietetic registration that is a member of the National Commission for Certifying Agencies.

[4] "*Department*" means the *Department of Human Services*.]

(5) "Dietetics practice" means the integration and application of principles derived from the sciences of nutrition, biochemistry, food, management, physiology and behavioral and social sciences to achieve and maintain the health of people through:

(a) Assessing the nutritional needs of clients;

(b) Establishing priorities, goals and objectives that meet nutritional needs of clients;

(c) Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from a nutritional assessment with information on food and other sources of nutrients and meal preparation; and

(d) Evaluating, making changes in and maintaining appropriate standards of quality in food and nutrition services.

(6) "Licensed dietitian" means a dietitian licensed as provided in ORS 691.435.

SECTION 1109. ORS 691.485 is amended to read:

691.485. (1) There is established a Board of Examiners of Licensed Dietitians within the [*Department of Human Services*] **Oregon Health Authority** for the purpose of carrying out and enforcing the provisions of ORS 691.405 to 691.585.

(2) The board shall consist of seven members appointed by the [*department*] **authority** of which:

(a) Two are members of the general public;

(b) One is a physician trained in clinical nutrition; and

(c) Four are dietitians licensed under ORS 691.405 to 691.585 who have been engaged in the practice of dietetics for no fewer than five years.

(3) Members of the board shall be appointed for three-year terms and are eligible for reappointment, but none shall serve more than two consecutive terms.

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495.

SECTION 1110. ORS 692.300 is amended to read:

692.300. (1) There is created the State Mortuary and Cemetery Board in the [*Department of Human Services*] **Oregon Health Authority** to carry out the purposes and enforce the provisions of this chapter. The board shall consist of 11 members. The members of the board shall be as follows:

(a) Two members shall be licensed funeral service practitioners. One of the members under this paragraph shall be a funeral service practitioner who does not offer embalming.

(b) One member shall be a licensed embalmer.

(c) Three members shall be representatives of cemeteries, one representing for-profit cemeteries, one representing a city or county owned or operated cemetery and one representing a special district owned or operated cemetery.

(d) One member shall be a representative of a crematorium.

(e) Four members shall be representatives of the public, one of whom shall be a member of a recognized senior citizen organization.

(2) The term of office of the members of the board shall be four years ending on December 31. A member is eligible for no more than two consecutive terms. They shall be appointed by the Governor and hold office until the appointment and qualification of their successors.

SECTION 1111. ORS 693.115 is amended to read:

693.115. (1) The State Plumbing Board is established in the Department of Consumer and Business Services, consisting of seven members appointed by the Governor. The appointment of a member of the board is subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

(2) The members of the board shall be as follows:

(a) One journeyman plumber with 10 or more years' experience in the trade or calling of journeyman plumber;

(b) One licensed plumbing contractor;

(c) One local plumbing inspector who is a journeyman plumber;

(d) One registered professional mechanical engineer;

(e) One officer or employee of the [*Department of Human Services*] **Oregon Health Authority**;

(f) One plumbing equipment supplier who otherwise qualifies by experience in the industry or one building official; and

(g) One member of the general public.

(3) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor. A member is not eligible for appointment to more than two full terms of office. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board shall receive compensation and expenses as provided in ORS 292.495.

SECTION 1112. ORS 701.505 is amended to read:

701.505. For the purposes of ORS 431.920 and 701.500 to 701.515:

(1) "Abatement" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 701.500.

(2) "Accredited training program" means a training program that has been accredited by the [*Department of Human Services*] **Oregon Health Authority** to provide training for individuals engaged in lead-based paint activities.

(3) "Certified" means an action by the [*Department of Human Services*] **Oregon Health Authority** verifying the successful completion of a training program accredited by the [*department*] **authority** and any other requirements.

(4) "Discipline" means a specific type or category of lead-based paint activity.

(5) "Evaluation" has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 701.500.

(6) "Inspection" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 701.500.

(7) "Lead-based paint" has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 701.500.

(8) "Lead-based paint activities" has the meaning given that term in 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 701.500.

(9) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.

(10) "Licensed" means a person who has been certified by the [*Department of Human Services*] **Oregon Health Authority** in one or more disciplines and has completed the requirements of the Construction Contractors Board.

(11) "Registered" means a person or business that has met the requirements for registration under this chapter.

SECTION 1113. ORS 708A.430 is amended to read:

708A.430. (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor:

(a) To the surviving spouse on demand of the surviving spouse at any time after the death of the depositor;

(b) If there is no surviving spouse, to the Oregon Health Authority, on demand of the authority no less than 46 days and no more than 75 days from the death of the depositor when there is a preferred claim arising under ORS 414.105;

~~[(b)]~~ (c) If there is no surviving spouse **or authority claim**, to the Department of Human Services, on demand of the department no less than 46 days and no more than 75 days from the death of the depositor when there is a preferred claim arising under ORS 411.708~~], 411.795 or 414.105]~~ **or 411.795;**

~~[(c)]~~ (d) If there is no surviving spouse and no **authority or** department claim, to the depositor's surviving children 18 years of age or older;

~~[(d)]~~ (e) If there is no surviving spouse, **authority claim**, department claim or surviving child 18 years of age or older, to the depositor's surviving parents; or

~~[(e)]~~ (f) If there is no surviving spouse, **authority claim**, department claim, surviving child 18 years of age or older or surviving parent, to the depositor's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed \$25,000;

(c) Show the relationship of the affiant to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased depositor out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the depositor died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The financial institution shall determine the relationship of the affiant to the deceased depositor. However, payment of the moneys in good faith to the affiant discharges and releases the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the deceased depositor.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, **authority**, department, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a financial institution transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515.

SECTION 1114. ORS 722.262 is amended to read:

722.262. (1) On the death of an account holder or a holder of a demand deposit account, if the savings liability of an association or federal association on all savings accounts of the deceased, and

the amounts held in all demand deposit accounts of the deceased, is \$25,000 or less, the association or federal association may, upon receipt of an affidavit from the person claiming the account as provided in subsection (2) of this section, pay the withdrawal value of the accounts of the deceased holder:

(a) To the surviving spouse on demand of the surviving spouse at any time after the death of the holder;

(b) If there is no surviving spouse, to the Oregon Health Authority, on demand of the department no less than 46 days and no more than 75 days from the death of the holder if the holder received medical assistance under ORS 414.105;

[(b)] (c) If there is no surviving spouse **or authority claim**, to the Department of Human Services, on demand of the department no less than 46 days and no more than 75 days from the death of the holder if the holder received public assistance under ORS 411.708, *411.795 or 414.105* **or 411.795;**

[(c)] (d) If there is no surviving spouse and no **authority or** department claim, to the holder's surviving children 18 years of age or older;

[(d)] (e) If there is no surviving spouse, **authority claim**, department claim or surviving child 18 years of age or older, to the holder's surviving parent; or

[(e)] (f) If there is no surviving spouse, **authority claim**, department claim, surviving child 18 years of age or older or surviving parent, to the holder's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the account holder or holder of a demand deposit account died;

(b) State that the total withdrawal value of all savings and demand deposit accounts of the deceased holder in all associations in Oregon, including federal associations, does not exceed \$25,000;

(c) Show the relationship of the affiant to the deceased holder; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased holder out of the account to the full extent of the account if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the holder died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the withdrawal value of the accounts as escheat property.

(4) A savings association or federal association is under no obligation to determine the relationship of the affiant to the deceased holder. Payment made in good faith to the person, **the Oregon Health Authority**, *[or]* the Department of Human Services or an estate administrator of the Department of State Lands making the affidavit is a full acquittance and release of the association or federal association for the amount so paid.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, **authority**, department, surviving children, surviving parent or surviving brothers and sisters to withdraw an account as provided by this section. However, if a personal representative is appointed in an estate of a deceased holder whose account has been withdrawn under this section, the person withdrawing the account shall account for it to the personal representative.

SECTION 1115. ORS 723.466 is amended to read:

723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

(a) To the surviving spouse on demand of the surviving spouse at any time after the death of the member;

(b) If there is no surviving spouse, to the Oregon Health Authority, on demand of the authority no less than 46 days and no more than 75 days from the death of the member when there is a preferred claim arising under ORS 414.105;

[(b)] (c) If there is no surviving spouse **or authority claim**, to the Department of Human Services, on demand of the department no less than 46 days and no more than 75 days from the death of the member when there is a preferred claim arising under ORS 411.708[, 411.795 or 414.105] **or 411.795**;

[(c)] (d) If there is no surviving spouse and no **authority or** department claim, to the member's surviving children 18 years of age or older;

[(d)] (e) If there is no surviving spouse, **authority claim**, department claim or surviving child 18 years of age or older, to the member's surviving parents; or

[(e)] (f) If there is no surviving spouse, **authority claim**, department claim, surviving child 18 years of age or older or surviving parent, to the member's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the member died;

(b) State that the total deposits of the deceased member in all financial institutions in this state do not exceed \$25,000;

(c) Show the relationship of the affiant to the deceased member; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased member out of the deposit, to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the member died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The credit union shall determine the relationship of the affiant to the deceased member. However, payment of the moneys in good faith to the affiant discharges and releases the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the deceased member.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, **authority**, department, surviving children, surviving parents, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a credit union transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor with a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties to the account under ORS 723.474 to 723.498.

NOTE: Section 1116 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 1117. ORS 731.276 is amended to read:

731.276. The Director of the Department of Consumer and Business Services shall continuously review the Insurance Code and **shall work with the Director of the Oregon Health Authority to review the health insurance provisions of the Insurance Code and** may, from time to time, make recommendations for changes therein.

SECTION 1118. ORS 735.610 is amended to read:

735.610. (1) There is created in the [*Department of Consumer and Business Services*] **Oregon Health Authority** the Oregon Medical Insurance Pool Board. The board shall establish the Oregon Medical Insurance Pool and otherwise carry out the responsibilities of the board under ORS 735.600 to 735.650.

(2) The board shall consist of nine individuals, [*eight*] **seven** of whom shall be appointed by the Director of the [*Department of Consumer and Business Services*] **Oregon Health Authority**. The

Director of the Department of Consumer and Business Services or the director's designee [*shall be a member*] **and the Director of the Oregon Health Authority or the director's designee shall be members** of the board. The chair of the board shall be elected from among the members of the board. The board shall at all times, to the extent possible, include at least one representative of a domestic insurance company licensed to transact health insurance, one representative of a domestic not-for-profit health care service contractor, one representative of a health maintenance organization, one representative of reinsurers and two members of the general public who are not associated with the medical profession, a hospital or an insurer.

(3) The director may fill any vacancy on the board by appointment.

(4) The board shall have the general powers and authority granted under the laws of this state to insurance companies with a certificate of authority to transact health insurance and the specific authority to:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of ORS 735.600 to 735.650 including the authority to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Recover any assessments for, on behalf of, or against insurers;

(c) Take such legal action as is necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, insurance producers' referral fees, claim reserves or formulas and perform any other actuarial function appropriate to the operation of the pool. Rates may not be unreasonable in relation to the coverage provided, the risk experience and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial and underwriting practices;

(e) Issue policies of insurance in accordance with the requirements of ORS 735.600 to 735.650;

(f) Appoint from among insurers appropriate actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy and other contract design, and any other function within the authority of the board;

(g) Seek advances to effect the purposes of the pool; and

(h) Establish rules, conditions and procedures for reinsuring risks under ORS 735.600 to 735.650.

(5) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(6) The Director of the [*Department of Consumer and Business Services*] **Oregon Health Authority** shall adopt rules, as provided under ORS chapter 183, implementing policies recommended by the board for the purpose of carrying out ORS 735.600 to 735.650.

(7) In consultation with the board, the director shall employ such staff and consultants as may be necessary for the purpose of carrying out responsibilities under ORS 735.600 to 735.650.

SECTION 1119. ORS 735.612 is amended to read:

735.612. (1) There is established in the State Treasury, the Oregon Medical Insurance Pool Account, which shall consist of:

(a) Moneys appropriated to the account by the Legislative Assembly to obtain the coverage described in ORS 735.625.

(b) Interest earnings from the investment of moneys in the account.

(c) Assessments and other revenues collected or received by the Oregon Medical Insurance Pool Board.

(2) All moneys in the Oregon Medical Insurance Pool Account are continuously appropriated to the Oregon Medical Insurance Pool Board to carry out the provisions of ORS 735.600 to 735.650.

(3) The Oregon Medical Insurance Pool Board shall transfer to the [*Consumer and Business Services Fund created by ORS 705.145*] **Oregon Health Authority Fund established in section 18 of this 2009 Act** an amount equal to the operating budget authorized by the Legislative Assembly

or as that budget may be modified by the Emergency Board or the Oregon Department of Administrative Services, for operation of the Oregon Medical Insurance Pool Board.

SECTION 1120. ORS 735.614 is amended to read:

735.614. (1) If the Oregon Medical Insurance Pool Board determines at any time that funds in the Oregon Medical Insurance Pool Account are or will become insufficient for payment of expenses of the pool in a timely manner, the board shall determine the amount of funds needed and shall impose and collect assessments against insurers, as provided in this section, in the amount of the funds determined to be needed.

(2) Each insurer's assessment shall be determined by multiplying the total amount to be assessed by a fraction, the numerator of which equals the number of Oregon insureds and certificate holders insured or reinsured by each insurer, and the denominator of which equals the total of all Oregon insureds and certificate holders insured or reinsured by all insurers, all determined as of March 31 each year.

(3) The board shall ensure that each insured and certificate holder is counted only once with respect to any assessment. For that purpose, the board shall require each insurer that obtains reinsurance for its insureds and certificate holders to include in its count of insureds and certificate holders all insureds and certificate holders whose coverage is reinsured in whole or part. The board shall allow an insurer who is a reinsurer to exclude from its number of insureds those that have been counted by the primary insurer or the primary reinsurer for the purpose of determining its assessment under this subsection.

(4) Each insurer shall pay its assessment as required by the board.

(5) If assessments exceed the amounts actually needed, the excess shall be held and invested and, with the earnings and interest, used by the board to offset future net losses or to reduce pool premiums. For purposes of this subsection, "future net losses" includes reserves for claims incurred but not reported.

(6) Each insurer's proportion of participation in the pool shall be determined by the board based on annual statements and other reports deemed necessary by the board and filed by the insurer with the board. The board may use any reasonable method of estimating the number of insureds and certificate holders of an insurer if the specific number is unknown. With respect to insurers that are reinsurers, the board may use any reasonable method of estimating the number of persons insured by each reinsurer.

(7) The board may abate or defer, in whole or in part, the assessment of an insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill the insurer's contractual obligations. In the event an assessment against an insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other insurers in a manner consistent with the basis for assessments set forth in this section. The insurer receiving the abatement or deferment shall remain liable to the board for the deficiency for four years.

(8) The board shall abate or defer assessments authorized by this section if a court orders that assessments cannot be made applicable to reinsurers. However, if a court orders that assessments cannot be made applicable to reinsurers, the board may continue to assess insurers to the end of the biennium in which the determination is made.

(9) Subject to the approval of the Director of the [*Department of Consumer and Business Services*] **Oregon Health Authority**, the board may develop a program for adjusting the assessment of an insurer in the individual health benefits market based on that insurer's contribution to reducing the enrollment in the Oregon Medical Insurance Pool. When developing the program, the board may consider, but is not limited to, the following factors:

- (a) The insurer's level of participation;
- (b) Level of health benefit plan coverage offered; and
- (c) Assumption of risk in the individual health benefits market.

SECTION 1120a. ORS 735.625 is amended to read:

735.625. (1) Except as provided in subsection (3)(c) of this section, the Oregon Medical Insurance Pool Board shall offer major medical expense coverage to every eligible person.

(2) The coverage to be issued by the board, its schedule of benefits, exclusions and other limitations, shall be established through rules adopted by the board, taking into consideration the advice and recommendations of the pool members. In the absence of such rules, the pool shall adopt by rule the minimum benefits prescribed by section 6 (Alternative 1) of the Model Health Insurance Pooling Mechanism Act of the National Association of Insurance Commissioners (1984).

(3)(a) In establishing portability coverage under the pool, the board shall consider the levels of medical insurance provided in this state and medical economic factors identified by the board. The board may adopt rules to establish benefit levels, deductibles, coinsurance factors, exclusions and limitations that the board determines are equivalent to the portability health benefit plans established under ORS 743.760.

(b) In establishing medical insurance coverage under the pool, the board shall consider the levels of medical insurance provided in this state and medical economic factors identified by the board. The board may adopt rules to establish benefit levels, deductibles, coinsurance factors, exclusions and limitations that the board determines are equivalent to those found in the commercial group or employer-based medical insurance market.

(c) The board may provide a separate Medicare supplement policy for individuals under the age of 65 who are receiving Medicare disability benefits. The board shall adopt rules to establish benefits, deductibles, coinsurance, exclusions and limitations, premiums and eligibility requirements for the Medicare supplement policy.

(d) In establishing medical insurance coverage for persons eligible for coverage under ORS 735.615 (1)(d), the board shall consider the levels of medical insurance provided in this state and medical economic factors identified by the board. The board may adopt rules to establish benefit levels, deductibles, coinsurance factors, exclusions and limitations to create benefit plans that qualify the person for the credit for health insurance costs under section 35 of the federal Internal Revenue Code, as amended and in effect on December 31, 2004.

(4)(a) Premiums charged for coverages issued by the board may not be unreasonable in relation to the benefits provided, the risk experience and the reasonable expenses of providing the coverage.

(b) Separate schedules of premium rates based on age and geographical location may apply for individual risks.

(c) The board shall determine the applicable medical and portability risk rates either by calculating the average rate charged by insurers offering coverages in the state comparable to the pool coverage or by using reasonable actuarial techniques. The risk rates shall reflect anticipated experience and expenses for such coverage. Rates for pool coverage may not be more than 125 percent of rates established as applicable for medically eligible individuals or for persons eligible for pool coverage under ORS 735.615 (1)(d), or 100 percent of rates established as applicable for portability eligible individuals.

(d) The board shall annually determine adjusted benefits and premiums. The adjustments shall be in keeping with the purposes of ORS 735.600 to 735.650, subject to a limitation of keeping pool losses under one percent of the total of all medical insurance premiums, subscriber contract charges and 110 percent of all benefits paid by member self-insurance arrangements. The board may determine the total number of persons that may be enrolled for coverage at any time and may permit and prohibit enrollment in order to maintain the number authorized. Nothing in this paragraph authorizes the board to prohibit enrollment for any reason other than to control the number of persons in the pool.

(5)(a) The board may apply:

(A) A waiting period of not more than 90 days during which the person has no available coverage; or

(B) Except as provided in paragraph (c) of this subsection, a preexisting conditions provision of not more than six months from the effective date of coverage under the pool.

(b) In determining whether a preexisting conditions provision applies to an eligible enrollee, except as provided in this subsection, the board shall credit the time the eligible enrollee was covered under a previous health benefit plan if the previous health benefit plan was continuous to a date not more than 63 days prior to the effective date of the new coverage under the Oregon Medical Insurance Pool, exclusive of any applicable waiting period. The Oregon Medical Insurance Pool Board need not credit the time for previous coverage to which the insured or dependent is otherwise entitled under this subsection with respect to benefits and services covered in the pool coverage that were not covered in the previous coverage.

(c) The board may adopt rules applying a preexisting conditions provision to a person who is eligible for coverage under ORS 735.615 (1)(d).

(d) For purposes of this subsection, a “preexisting conditions provision” means a provision that excludes coverage for services, charges or expenses incurred during a specified period not to exceed six months following the insured’s effective date of coverage, for a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six-month period immediately preceding the insured’s effective date of coverage.

(6)(a) Benefits otherwise payable under pool coverage shall be reduced by all amounts paid or payable through any other health insurance, or self-insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers’ compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program except the Medicaid portion of the [*Oregon Health Plan*] **medical assistance program** offering a level of health services described in ORS 414.707.

(b) The board shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not for covered expenses. Benefits due from the pool may be reduced or refused as a setoff against any amount recoverable under this paragraph.

(7) Except as provided in ORS 735.616, no mandated benefit statutes apply to pool coverage under ORS 735.600 to 735.650.

(8) Pool coverage may be furnished through a health care service contractor or such alternative delivery system as will contain costs while maintaining quality of care.

SECTION 1121. ORS 735.630 is amended to read:

735.630. Neither participation in the pool as members, the establishment of rates, forms or procedures, nor any other action taken in the performance of the powers and duties under ORS 735.600 to 735.650 shall be the basis of any legal action, criminal or civil liability or penalty against the Oregon Medical Insurance Pool Board, any members, the Director of the [*Department of Consumer and Business Services*] **Oregon Health Authority** or any of their agents or employees.

NOTE: Section 1122 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 1123. ORS 735.701 is amended to read:

735.701. (1) The Office of Private Health Partnerships is established **in the Oregon Health Authority**.

(2) The office shall carry out the duties described under ORS [*414.831,*] 735.700 to 735.714 and 735.720 to 735.740.

SECTION 1124. ORS 735.706 is amended to read:

735.706. (1) The Office of Private Health Partnerships Account is established separate and distinct from the General Fund. All moneys received by the Office of Private Health Partnerships, other than appropriations from the General Fund and except for moneys in the account established by ORS 735.736, shall be deposited into the account and are continuously appropriated to the office to carry out the duties, functions and powers of the office.

(2) **All moneys in the Office of Private Health Partnerships Account shall be transferred to the Oregon Health Authority Fund established in section 18 of this 2009 Act.**

SECTION 1125. ORS 735.722 is amended to read:

735.722. (1) There is established the Family Health Insurance Assistance Program in the Office of Private Health Partnerships. The purpose of the program is to remove economic barriers to

health insurance coverage for residents of the State of Oregon with family income less than 200 percent of the federal poverty level, and investment and savings less than the limit established by the office, while encouraging individual responsibility, promoting health benefit plan coverage of children, building on the private sector health benefit plan system and encouraging employer and employee participation in employer-sponsored health benefit plan coverage.

(2) The Office of Private Health Partnerships shall be responsible for the implementation and operation of the Family Health Insurance Assistance Program. The Administrator of the Office for Oregon Health Policy and Research, in consultation with the Oregon Health [*Policy Commission*] **Policy Board**, shall make recommendations to the Office of Private Health Partnerships regarding program policy, including but not limited to eligibility requirements, assistance levels, benefit criteria and carrier participation.

(3) The Office of Private Health Partnerships may contract with one or more third-party administrators to administer one or more components of the Family Health Insurance Assistance Program. Duties of a third-party administrator may include but are not limited to:

- (a) Eligibility determination;
- (b) Data collection;
- (c) Assistance payments;
- (d) Financial tracking and reporting; and
- (e) Such other services as the office may deem necessary for the administration of the program.

(4) If the office decides to enter into a contract with a third-party administrator pursuant to subsection (3) of this section, the office shall engage in competitive bidding. The office shall evaluate bids according to criteria established by the office, including but not limited to:

- (a) The bidder's proven ability to administer a program of the size of the Family Health Insurance Assistance Program;
- (b) The efficiency of the bidder's payment procedures;
- (c) The estimate provided of the total charges necessary to administer the program; and
- (d) The bidder's ability to operate the program in a cost-effective manner.

SECTION 1126. ORS 735.734 is amended to read:

735.734. The Office of Private Health Partnerships, in consultation with the Administrator of the Office for Oregon Health Policy and Research and the [*Department of Human Services*] **Oregon Health Authority**, shall adopt all rules necessary for the implementation and operation of the Family Health Insurance Assistance Program.

SECTION 1127. ORS 735.754 is amended to read:

735.754. (1) In order to increase public subsidies for the purchase of health insurance coverage provided by public programs or private insurance described by ORS 414.839, the Office of Private Health Partnerships, the Oregon Medical Insurance Pool Board and the [*Department of Human Services*] **Oregon Health Authority** shall work cooperatively to obtain federal matching dollars. The office, the Oregon Medical Insurance Pool Board and the [*department*] **authority** shall develop a system for payment or reimbursement of other costs and subsidies provided to subsidized members.

(2) For each subsidized member, the Oregon Medical Insurance Pool Board shall determine:

- (a) The full cost of administering the benefits plan of the subsidized member; and
- (b) The amount of other costs.

(3) The Oregon Medical Insurance Pool Board shall bill the Family Health Insurance Assistance Program for the total amount of the premium received by the Oregon Medical Insurance Pool Board and for the amount of other costs. The program shall forward the bill to the [*department*] **authority**.

(4) The [*department*] **authority** shall pay the program an amount equal to the portion of the premium that is a subsidy and for other costs. The program shall forward the payment to the Oregon Medical Insurance Pool Board.

SECTION 1128. ORS 735.756 is amended to read:

735.756. (1) Of payments made to the Family Health Insurance Assistance Program by the [Department of Human Services] **Oregon Health Authority** under ORS 735.754 (4), the [department] **authority** shall determine:

- (a) The portion of a subsidy of a subsidized member that is from the General Fund; and
- (b) The portion of other costs that is from the General Fund.

(2) The [department] **authority** shall bill the program for the amounts determined under subsection (1) of this section. The program shall forward the bill for the amount determined under subsection (1)(b) of this section to the Oregon Medical Insurance Pool Board.

(3) The board shall:

(a) Determine the amount of funds needed for the payment of other costs under subsection (1)(b) of this section; and

(b) Impose and collect assessments in that amount against insurers, using the methodology described in ORS 735.614 (2), (6) and (9).

(4) The board shall pay the program for the amounts determined under subsection (1)(b) of this section.

(5) The program shall forward to the [department] **authority** the amounts determined under subsection (1) of this section.

(6) ORS 735.614 (3), (4), (5), (7) and (8) applies to assessments collected under this section.

NOTE: Sections 1129 to 1134 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 1135. ORS 743.730 is amended to read:

743.730. For purposes of ORS 743.730 to 743.773:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Director of the Department of Consumer and Business Services that a carrier is in compliance with the provisions of ORS 743.736, 743.760 or 743.761, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the carrier in establishing premium rates for small employer and portability health benefit plans.

(2) "Affiliate" of, or person "affiliated" with, a specified person means any carrier who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a specified person. For purposes of this definition, "control" has the meaning given that term in ORS 732.548.

(3) "Affiliation period" means, under the terms of a group health benefit plan issued by a health care service contractor, a period:

(a) That is applied uniformly and without regard to any health status related factors to an enrollee or late enrollee in lieu of a preexisting conditions provision;

(b) That must expire before any coverage becomes effective under the plan for the enrollee or late enrollee;

(c) During which no premium shall be charged to the enrollee or late enrollee; and

(d) That begins on the enrollee's or late enrollee's first date of eligibility for coverage and runs concurrently with any eligibility waiting period under the plan.

(4) "Basic health benefit plan" means a health benefit plan for small employers that is required to be offered by all small employer carriers and approved by the Director of the Department of Consumer and Business Services in accordance with ORS 743.736.

(5) "Bona fide association" means an association that meets the requirements of 42 U.S.C. 300gg-11 as amended and in effect on July 1, 1997.

(6) "Carrier" means any person who provides health benefit plans in this state, including a licensed insurance company, a health care service contractor, a health maintenance organization, an association or group of employers that provides benefits by means of a multiple employer welfare arrangement or any other person or corporation responsible for the payment of benefits or provision of services.

(7) "Committee" means the Health Insurance Reform Advisory Committee created under ORS 743.745.

(8) "Creditable coverage" means prior health care coverage as defined in 42 U.S.C. 300gg as amended and in effect on July 1, 1997, and includes coverage remaining in force at the time the enrollee obtains new coverage.

(9) "Department" means the Department of Consumer and Business Services.

(10) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee.

(11) "Director" means the Director of the Department of Consumer and Business Services.

(12) "Eligible employee" means an employee of a small employer who works on a regularly scheduled basis, with a normal work week of 17.5 or more hours. The employer may determine hours worked for eligibility between 17.5 and 40 hours per week subject to rules of the carrier. "Eligible employee" does not include employees who work on a temporary, seasonal or substitute basis. Employees who have been employed by the small employer for fewer than 90 days are not eligible employees unless the small employer so allows.

(13) "Employee" means any individual employed by an employer.

(14) "Enrollee" means an employee, dependent of the employee or an individual otherwise eligible for a group, individual or portability health benefit plan who has enrolled for coverage under the terms of the plan.

(15) "Exclusion period" means a period during which specified treatments or services are excluded from coverage.

(16) "Financially impaired" means a member that is not insolvent and is:

(a) Considered by the Director of the Department of Consumer and Business Services to be potentially unable to fulfill its contractual obligations; or

(b) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(17)(a) "Geographic average rate" means the arithmetical average of the lowest premium and the corresponding highest premium to be charged by a carrier in a geographic area established by the director for the carrier's:

(A) Small employer group health benefit plans;

(B) Individual health benefit plans; or

(C) Portability health benefit plans.

(b) "Geographic average rate" does not include premium differences that are due to differences in benefit design or family composition.

(18) "Group eligibility waiting period" means, with respect to a group health benefit plan, the period of employment or membership with the group that a prospective enrollee must complete before plan coverage begins.

(19)(a) "Health benefit plan" means any hospital expense, medical expense or hospital or medical expense policy or certificate, health care service contractor or health maintenance organization subscriber contract, any plan provided by a multiple employer welfare arrangement or by another benefit arrangement defined in the federal Employee Retirement Income Security Act of 1974, as amended.

(b) "Health benefit plan" does not include coverage for accident only, specific disease or condition only, credit, disability income, coverage of Medicare services pursuant to contracts with the federal government, Medicare supplement insurance policies, coverage of CHAMPUS services pursuant to contracts with the federal government, benefits delivered through a flexible spending arrangement established pursuant to section 125 of the Internal Revenue Code of 1986, as amended, when the benefits are provided in addition to a group health benefit plan, long term care insurance, hospital indemnity only, short term health insurance policies (the duration of which does not exceed six months including renewals), student accident and health insurance policies, dental only, vision only, a policy of stop-loss coverage that meets the requirements of ORS 742.065, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance or insurance under which benefits are payable with or

without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(c) Nothing in this subsection shall be construed to regulate any employee welfare benefit plan that is exempt from state regulation because of the federal Employee Retirement Income Security Act of 1974, as amended.

(20) "Health statement" means any information that is intended to inform the carrier or insurance producer of the health status of an enrollee or prospective enrollee in a health benefit plan. "Health statement" includes the standard health statement developed by the Health Insurance Reform Advisory Committee.

(21) "Implementation of chapter 836, Oregon Laws 1989" means that the Health Services Commission has prepared a priority list, the Legislative Assembly has enacted funding of the list and all necessary federal approval, including waivers, has been obtained.

(22) "Individual coverage waiting period" means a period in an individual health benefit plan during which no premiums may be collected and health benefit plan coverage issued is not effective.

(23) "Initial enrollment period" means a period of at least 30 days following commencement of the first eligibility period for an individual.

(24) "Late enrollee" means an individual who enrolls in a group health benefit plan subsequent to the initial enrollment period during which the individual was eligible for coverage but declined to enroll. However, an eligible individual shall not be considered a late enrollee if:

(a) The individual qualifies for a special enrollment period in accordance with 42 U.S.C. 300gg as amended and in effect on July 1, 1997;

(b) The individual applies for coverage during an open enrollment period;

(c) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan and request for enrollment is made within 30 days after issuance of the court order;

(d) The individual is employed by an employer who offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period; or

(e) The individual's coverage under Medicaid, Medicare, CHAMPUS, Indian Health Service or a publicly sponsored or subsidized health plan, including but not limited to the [*Oregon Health Plan*] **medical assistance program under ORS chapter 414**, has been involuntarily terminated within 63 days of applying for coverage in a group health benefit plan.

(25) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1002, that is subject to ORS 750.301 to 750.341.

(26) "Oregon Medical Insurance Pool" means the pool created under ORS 735.610.

(27) "Preexisting conditions provision" means a health benefit plan provision applicable to an enrollee or late enrollee that excludes coverage for services, charges or expenses incurred during a specified period immediately following enrollment for a condition for which medical advice, diagnosis, care or treatment was recommended or received during a specified period immediately preceding enrollment. For purposes of ORS 743.730 to 743.773:

(a) Pregnancy does not constitute a preexisting condition except as provided in ORS 743.766;

(b) Genetic information does not constitute a preexisting condition in the absence of a diagnosis of the condition related to such information; and

(c) A preexisting conditions provision shall not be applied to a newborn child or adopted child who obtains coverage in accordance with ORS 743A.090.

(28) "Premium" includes insurance premiums or other fees charged for a health benefit plan, including the costs of benefits paid or reimbursements made to or on behalf of enrollees covered by the plan.

(29) "Rating period" means the 12-month calendar period for which premium rates established by a carrier are in effect, as determined by the carrier.

(30)(a) "Small employer" means an employer that employed an average of at least two but not more than 50 employees on business days during the preceding calendar year, the majority of whom

are employed within this state, and that employs at least two eligible employees on the date on which coverage takes effect under a health benefit plan issued by a small employer carrier.

(b) Any person that is treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as one employer for purposes of this subsection.

(c) The determination of whether an employer that was not in existence throughout the preceding calendar year is a small employer shall be based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.

(31) "Small employer carrier" means any carrier that offers health benefit plans covering eligible employees of one or more small employers. A fully insured multiple employer welfare arrangement otherwise exempt under ORS 750.303 (4) may elect to be a small employer carrier governed by the provisions of ORS 743.733 to 743.737.

SECTION 1136. ORS 743.737 is amended to read:

743.737. Health benefit plans covering small employers shall be subject to the following provisions:

(1) A preexisting conditions provision in a small employer health benefit plan shall apply only to a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six-month period immediately preceding the enrollment date of an enrollee or late enrollee. As used in this section, the enrollment date of an enrollee shall be the earlier of the effective date of coverage or the first day of any required group eligibility waiting period and the enrollment date of a late enrollee shall be the effective date of coverage.

(2) A preexisting conditions provision in a small employer health benefit plan shall terminate its effect as follows:

(a) For an enrollee, not later than the first of the following dates:

(A) Six months following the enrollee's effective date of coverage; or

(B) Ten months following the start of any required group eligibility waiting period.

(b) For a late enrollee, not later than 12 months following the late enrollee's effective date of coverage.

(3) In applying a preexisting conditions provision to an enrollee or late enrollee, except as provided in this subsection, all small employer health benefit plans shall reduce the duration of the provision by an amount equal to the enrollee's or late enrollee's aggregate periods of creditable coverage if the most recent period of creditable coverage is ongoing or ended within 63 days of the enrollment date in the new small employer health benefit plan. The crediting of prior coverage in accordance with this subsection shall be applied without regard to the specific benefits covered during the prior period. This subsection does not preclude, within a small employer health benefit plan, application of:

(a) An affiliation period that does not exceed two months for an enrollee or three months for a late enrollee; or

(b) An exclusion period for specified covered services, as established by the Health Insurance Reform Advisory Committee, applicable to all individuals enrolling for the first time in the small employer health benefit plan.

(4) Late enrollees may be excluded from coverage for up to 12 months or may be subjected to a preexisting conditions provision for up to 12 months. If both an exclusion from coverage period and a preexisting conditions provision are applicable to a late enrollee, the combined period shall not exceed 12 months.

(5) Each small employer health benefit plan shall be renewable with respect to all eligible enrollees at the option of the policyholder, small employer or contract holder except:

(a) For nonpayment of the required premiums by the policyholder, small employer or contract holder.

(b) For fraud or misrepresentation of the policyholder, small employer or contract holder or, with respect to coverage of individual enrollees, the enrollees or their representatives.

(c) When the number of enrollees covered under the plan is less than the number or percentage of enrollees required by participation requirements under the plan.

(d) For noncompliance with the small employer carrier's employer contribution requirements under the health benefit plan.

(e) When the carrier discontinues offering or renewing, or offering and renewing, all of its small employer health benefit plans in this state or in a specified service area within this state. In order to discontinue plans under this paragraph, the carrier:

(A) Must give notice of the decision to the Director of the Department of Consumer and Business Services and to all policyholders covered by the plans;

(B) May not cancel coverage under the plans for 180 days after the date of the notice required under subparagraph (A) of this paragraph if coverage is discontinued in the entire state or, except as provided in subparagraph (C) of this paragraph, in a specified service area;

(C) May not cancel coverage under the plans for 90 days after the date of the notice required under subparagraph (A) of this paragraph if coverage is discontinued in a specified service area because of an inability to reach an agreement with the health care providers or organization of health care providers to provide services under the plans within the service area; and

(D) Must discontinue offering or renewing, or offering and renewing, all health benefit plans issued by the carrier in the small employer market in this state or in the specified service area.

(f) When the carrier discontinues offering and renewing a small employer health benefit plan in a specified service area within this state because of an inability to reach an agreement with the health care providers or organization of health care providers to provide services under the plan within the service area. In order to discontinue a plan under this paragraph, the carrier:

(A) Must give notice to the director and to all policyholders covered by the plan;

(B) May not cancel coverage under the plan for 90 days after the date of the notice required under subparagraph (A) of this paragraph; and

(C) Must offer in writing to each small employer covered by the plan, all other small employer health benefit plans that the carrier offers in the specified service area. The carrier shall issue any such plans pursuant to the provisions of ORS 743.733 to 743.737. The carrier shall offer the plans at least 90 days prior to discontinuation.

(g) When the carrier discontinues offering or renewing, or offering and renewing, a health benefit plan for all small employers in this state or in a specified service area within this state, other than a plan discontinued under paragraph (f) of this subsection. With respect to plans that are being discontinued, the carrier must:

(A) Offer in writing to each small employer covered by the plan, all health benefit plans that the carrier offers in the specified service area.

(B) Issue any such plans pursuant to the provisions of ORS 743.733 to 743.737.

(C) Offer the plans at least 90 days prior to discontinuation.

(D) Act uniformly without regard to the claims experience of the affected policyholders or the health status of any current or prospective enrollee.

(h) When the director orders the carrier to discontinue coverage in accordance with procedures specified or approved by the director upon finding that the continuation of the coverage would:

(A) Not be in the best interests of the enrollees; or

(B) Impair the carrier's ability to meet contractual obligations.

(i) When, in the case of a small employer health benefit plan that delivers covered services through a specified network of health care providers, there is no longer any enrollee who lives, resides or works in the service area of the provider network.

(j) When, in the case of a health benefit plan that is offered in the small employer market only through one or more bona fide associations, the membership of an employer in the association ceases and the termination of coverage is not related to the health status of any enrollee.

(k) For misuse of a provider network provision. As used in this paragraph, "misuse of a provider network provision" means a disruptive, unruly or abusive action taken by an enrollee that threatens the physical health or well-being of health care staff and seriously impairs the ability of the carrier

or its participating providers to provide services to an enrollee. An enrollee under this paragraph retains the rights of an enrollee under ORS 743.804.

(L) A small employer carrier may modify a small employer health benefit plan at the time of coverage renewal. The modification is not a discontinuation of the plan under paragraphs (e) and (g) of this subsection.

(6) Notwithstanding any provision of subsection (5) of this section to the contrary, any small employer carrier health benefit plan subject to the provisions of ORS 743.733 to 743.737 may be rescinded by a small employer carrier for fraud, material misrepresentation or concealment by a small employer and the coverage of an enrollee may be rescinded for fraud, material misrepresentation or concealment by the enrollee.

(7) A small employer carrier may continue to enforce reasonable employer participation and contribution requirements on small employers applying for coverage. However, participation and contribution requirements shall be applied uniformly among all small employer groups with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier. In determining minimum participation requirements, a carrier shall count only those employees who are not covered by an existing group health benefit plan, Medicaid, Medicare, CHAMPUS, Indian Health Service or a publicly sponsored or subsidized health plan, including but not limited to the [*Oregon Health Plan*] **medical assistance program under ORS chapter 414**.

(8) Premium rates for small employer health benefit plans shall be subject to the following provisions:

(a) Each small employer carrier issuing health benefit plans to small employers must file its geographic average rate for a rating period with the director at least once every 12 months.

(b)(A) The premium rates charged during a rating period for health benefit plans issued to small employers may not vary from the geographic average rate by more than 50 percent on or after January 1, 2008, except as provided in subparagraph (D) of this paragraph.

(B) The variations in premium rates described in subparagraph (A) of this paragraph shall be based solely on the factors specified in subparagraph (C) of this paragraph. A small employer carrier may elect which of the factors specified in subparagraph (C) of this paragraph apply to premium rates for small employers. The factors that are based on contributions or participation may vary with the size of the employer. All other factors must be applied in the same actuarially sound way to all small employers.

(C) The variations in premium rates described in subparagraph (A) of this paragraph may be based on one or more of the following factors:

(i) The ages of enrolled employees and their dependents;

(ii) The level at which the small employer contributes to the premiums payable for enrolled employees and their dependents;

(iii) The level at which eligible employees participate in the health benefit plan;

(iv) The level at which enrolled employees and their dependents engage in tobacco use;

(v) The level at which enrolled employees and their dependents engage in health promotion, disease prevention or wellness programs;

(vi) The period of time during which a small employer retains uninterrupted coverage in force with the same small employer carrier; and

(vii) Adjustments to reflect the provision of benefits not required to be covered by the basic health benefit plan and differences in family composition.

(D)(i) The premium rates determined in accordance with this paragraph may be further adjusted by a small employer carrier to reflect the expected claims experience of a small employer, but the extent of this adjustment may not exceed five percent of the annual premium rate otherwise payable by the small employer. The adjustment under this subparagraph may not be cumulative from year to year.

(ii) Except for small employers with 25 or fewer employees, the premium rates adjusted under this subparagraph are not subject to the provisions of subparagraph (A) of this paragraph.

(E) A small employer carrier shall apply the carrier's schedule of premium rate variations as approved by the Director of the Department of Consumer and Business Services and in accordance with this paragraph. Except as otherwise provided in this section, the premium rate established for a health benefit plan by a small employer carrier shall apply uniformly to all employees of the small employer enrolled in that plan.

(c) Except as provided in paragraph (b) of this subsection, the variation in premium rates between different small employer health benefit plans offered by a small employer carrier must be based solely on objective differences in plan design or coverage and must not include differences based on the risk characteristics of groups assumed to select a particular health benefit plan.

(d) A small employer carrier may not increase the rates of a health benefit plan issued to a small employer more than once in a 12-month period. Annual rate increases shall be effective on the plan anniversary date of the health benefit plan issued to a small employer. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(A) The percentage change in the geographic average rate measured from the first day of the prior rating period to the first day of the new period; and

(B) Any adjustment attributable to changes in age, except an additional adjustment may be made to reflect the provision of benefits not required to be covered by the basic health benefit plan and differences in family composition.

(e) Premium rates for health benefit plans shall comply with the requirements of this section.

(9) In connection with the offering for sale of any health benefit plan to a small employer, each small employer carrier shall make a reasonable disclosure as part of its solicitation and sales materials of:

(a) The full array of health benefit plans that are offered to small employers by the carrier;

(b) The authority of the carrier to adjust rates, and the extent to which the carrier will consider age, family composition and geographic factors in establishing and adjusting rates;

(c) Provisions relating to renewability of policies and contracts; and

(d) Provisions affecting any preexisting conditions provision.

(10)(a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial practices and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the director at least once every 12 months an actuarial certification that the carrier is in compliance with ORS 743.733 to 743.737 and that the rating methods of the small employer carrier are actuarially sound. Each such certification shall be in a uniform form and manner and shall contain such information as specified by the director. A copy of such certification shall be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in paragraph (a) of this subsection available to the director upon request. Except as provided in ORS 743.018 and except in cases of violations of ORS 743.733 to 743.737, the information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the director to persons outside the Department of Consumer and Business Services except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

(11) A small employer carrier shall not provide any financial or other incentive to any insurance producer that would encourage the insurance producer to market and sell health benefit plans of the carrier to small employer groups based on a small employer group's anticipated claims experience.

(12) For purposes of this section, the date a small employer health benefit plan is continued shall be the anniversary date of the first issuance of the health benefit plan.

(13) A small employer carrier must include a provision that offers coverage to all eligible employees and to all dependents to the extent the employer chooses to offer coverage to dependents.

(14) All small employer health benefit plans shall contain special enrollment periods during which eligible employees and dependents may enroll for coverage, as provided in 42 U.S.C. 300gg as amended and in effect on July 1, 1997.

SECTION 1137. ORS 743.831 is amended to read:

743.831. (1) The Administrator of the Office for Oregon Health Policy and Research shall establish a consortium of interested parties that shall:

(a) Develop, on a voluntary basis, standardized, quantitative performance measurements of managed health insurance organizations for use by health care consumers, purchasers and providers to continuously assess the quality of clinical and service-related aspects of health care arranged for or provided by managed health insurance organizations;

(b) Encourage managed health insurance organizations to collect, on a voluntary basis, the performance measurements specified in paragraph (a) of this subsection and share that information with the consortium;

(c) Develop, test, refine and produce one or more managed health care performance scorecards to provide consumers and purchasers with accurate, reliable and timely comparisons of managed health insurance organizations with respect to:

(A) Organizational characteristics;

(B) Clinical quality measurements;

(C) Service-related quality measurements; and

(D) Member and patient satisfaction; and

(d) Carry out the activities specified in this subsection with the objective of:

(A) Utilizing, to the greatest extent feasible and desirable, nationally developed quality assessment tools; and

(B) Minimizing duplicative quality assessment activities and associated administrative costs.

(2) The consortium established pursuant to subsection (1) of this section shall be comprised of representatives of:

(a) Health care consumers;

(b) Private-sector and public-sector health care purchasers;

(c) Managed health insurance organizations;

(d) Health care providers, including but not limited to physicians, nurses and hospitals;

(e) State agencies, including but not limited to the Department of Consumer and Business Services and the *[Department of Human Services]* **Oregon Health Authority**;

(f) Oregon institutions of higher education with relevant professional expertise; and

(g) Other groups or organizations as determined to be appropriate by the administrator to ensure broad representation of interests and expertise.

(3) The Office for Oregon Health Policy and Research shall:

(a) Provide staffing for the consortium; and

(b) Seek public and private funds to assist in the work of the consortium.

SECTION 1138. ORS 802.250 is amended to read:

802.250. (1) An eligible public employee may request that any driver or vehicle record kept by the Department of Transportation that contains or is required to contain the eligible employee's residence address contain instead the address of the public agency employing the eligible employee. A request under this section shall:

(a) Be in a form specified by the department that provides for verification of the eligible employee's employment.

(b) Contain verification by the employing public agency of the eligible employee's employment with the public agency.

(2) Upon receipt of a request and verification under subsection (1) of this section, the department shall remove the eligible employee's residence address from its records, if necessary, and substitute therefor the address of the public agency employing the eligible employee. The department shall indicate on the records that the address shown is an employment address. While the request

is in effect, the eligible employee may enter the address of the public agency employing the eligible employee on any driver or vehicle form issued by the department that requires an address.

(3) A public agency that verifies an eligible employee's employment under subsection (1) of this section shall notify the department within 30 days if the eligible employee ceases to be employed by the public agency. The eligible employee shall notify the department of a change of address as provided in ORS 803.220 or 807.560.

(4) As used in this section, "eligible employee" means:

(a) A member of the State Board of Parole and Post-Prison Supervision.

(b) The Director of the Department of Corrections and an employee of an institution defined in ORS 421.005 as Department of Corrections institutions, whose duties, as assigned by the superintendent, include the custody of persons committed to the custody of or transferred to the institution.

(c) A parole and probation officer employed by the Department of Corrections and an employee of the Department of Corrections Release Center whose duties, as assigned by the Chief of the Release Center, include the custody of persons committed to the custody of or transferred to the Release Center.

(d) A police officer appointed under ORS 276.021 or 276.023.

(e) An employee of the State Department of Agriculture who is classified as a brand inspector by the Director of Agriculture.

(f) An investigator of the Criminal Justice Division of the Department of Justice.

(g) A corrections officer as defined in ORS 181.610.

(h) A federal officer. As used in this paragraph, "federal officer" means a special agent or law enforcement officer employed by:

(A) The Federal Bureau of Investigation;

(B) The United States Secret Service;

(C) The United States Citizenship and Immigration Services;

(D) The United States Marshals Service;

(E) The Drug Enforcement Administration;

(F) The United States Postal Service;

(G) The United States Customs and Border Protection;

(H) The United States General Services Administration;

(I) The United States Department of Agriculture;

(J) The Bureau of Alcohol, Tobacco, Firearms and Explosives;

(K) The Internal Revenue Service;

(L) The United States Department of the Interior; or

(M) Any federal agency if the person is empowered to effect an arrest with or without warrant for violations of the United States Code and is authorized to carry firearms in the performance of duty.

(i) An employee of the Department of Human Services **or the Oregon Health Authority** whose duties include personal contact with clients or patients of the department **or the authority**.

(j) Any judge of a court of this state.

(k) An employee of the Oregon Youth Authority whose duties include personal contact with persons committed to the legal or physical custody of the authority.

(L) A district attorney, as defined in ORS 131.005, or deputy district attorney.

(m) An employee who provides educational services to persons who are clients or patients of the Department of Human Services **or the Oregon Health Authority**, who are under the jurisdiction of the Psychiatric Security Review Board or who are under the custody or supervision of the Department of Corrections, the State Board of Parole and Post-Prison Supervision, a community corrections agency, the Oregon Youth Authority or a juvenile department. As used in this paragraph, "employee who provides educational services" means a person who provides instruction, or services related to the instruction, of a subject usually taught in an elementary school, a secondary school

or a community college or who provides special education and related services in other than a school setting and who works for:

(A) An education service district or a community college district; or

(B) A state officer, board, commission, bureau, department or division in the executive branch of state government that provides educational services.

(n) An employee of the Oregon Liquor Control Commission who is:

(A) An inspector;

(B) An investigator; or

(C) A regulatory manager.

(o) A police officer as defined in ORS 801.395.

SECTION 1139. ORS 807.720 is amended to read:

807.720. On or before the 15th day of each month, the Director of [*Human Services*] **the Oregon Health Authority** shall forward to the Department of Transportation a copy of the death certificate covering the death, resulting from a motor vehicle accident, of any persons within the [*Director of Human Services*'] jurisdiction **of the Director of the Oregon Health Authority** during the preceding calendar month.

SECTION 1140. ORS 813.021 is amended to read:

813.021. (1) When a court, in accordance with ORS 813.020, requires a person to complete a screening interview and a treatment program, the court shall require the person to do all of the following:

(a) Complete a screening interview for the purpose of determining appropriate placement of the person in a program for treatment for alcoholism, drug dependency or dependency on inhalants.

(b) Pay directly to the agency or organization conducting the screening interview a fee of \$150.

(c) Complete the treatment program to which the person is referred.

(d) Pay for the treatment program to which the person is referred.

(2) The screening interview required by this section shall be conducted by an agency or organization designated by the court. The designated agency or organization must meet the standards set by the Director of [*Human Services*] **the Oregon Health Authority** to conduct the screening interviews. Wherever possible a court shall designate agencies or organizations to perform the screening interview that are separate from those that may be designated to carry out a treatment program.

(3) An agency or organization doing a screening interview under this section may not refer a person to a treatment program that has not been approved by the Director of [*Human Services*] **the Oregon Health Authority**.

(4) The agency or organization conducting a screening interview under this section shall monitor the progress of the person referred to the agency or organization. The agency or organization shall make a report to the referring court stating the person's successful completion or failure to complete all or any part of the screening interview or of the treatment program to which the person was referred by the agency or organization. The report shall be in a form determined by agreement between the court and the agency or organization.

SECTION 1141. ORS 813.025 is amended to read:

813.025. A court may designate a single agency or organization to perform the screening interviews and treatment programs described in ORS 813.021, or the diagnostic assessment and treatment described in ORS 813.260 (1) when the Director of [*Human Services*] **the Oregon Health Authority** certifies that:

(1) An agency or organization may accept such designations due to the lack of alternative agencies or organizations in the service area; or

(2) An agency or organization has applied to and been authorized by the [*Director of Human Services*] **Oregon Health Authority** to operate a demonstration project that combines screening interviews and treatment programs or diagnostic assessment and treatment. The [*Director of Human Services*] **authority** shall by rule set forth the conditions under which a demonstration project may be authorized.

SECTION 1142. ORS 813.030 is amended to read:

813.030. The fee required by ORS 471.432 and 813.020 (1) shall be in the amount of \$130, except that the court may waive all or part of the fee in cases involving indigent defendants. The court may make provision for payment of the fee on an installment basis. The fee shall be ordered paid as follows:

(1) \$105 to be credited and distributed under ORS 137.295 as an obligation payable to the state; and

(2) \$25 to be paid to the Director of [*Human Services*] **the Oregon Health Authority** for deposit in the Intoxicated Driver Program Fund created by ORS 813.270.

SECTION 1143. ORS 813.240 is amended to read:

813.240. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 813.210 shall be \$261 and shall be ordered paid as follows if the petition is allowed:

(a) \$136 to be credited and distributed under ORS 137.295 as an obligation payable to the state;

(b) \$100 to be treated as provided for disposition of fines and costs under ORS 153.630; and

(c) \$25 to be paid to the Director of [*Human Services*] **the Oregon Health Authority** for deposit in the Intoxicated Driver Program Fund created under ORS 813.270, to be used for purposes of the fund.

(2) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.

SECTION 1144. ORS 813.260 is amended to read:

813.260. (1) Courts having jurisdiction over driving while under the influence of intoxicants offenses shall designate agencies or organizations to perform the diagnostic assessment and treatment required under driving while under the influence of intoxicants diversion agreements described in ORS 813.200. The designated agencies or organizations must meet the standards set by the Director of [*Human Services*] **the Oregon Health Authority** to perform the diagnostic assessment and treatment of problem drinking, alcoholism and drug dependency and must be certified by the Director of [*Human Services*] **the Oregon Health Authority**. Wherever possible a court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of treatment.

(2) Monitoring of a defendant's progress under a diversion agreement shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the court stating the defendant's successful completion or failure to complete all or any part of the treatment program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report of the diagnostic assessment agency or organization that is required by this subsection a part of the record of the case.

SECTION 1145. ORS 813.270 is amended to read:

813.270. The Intoxicated Driver Program Fund is created to consist of moneys placed in the fund under ORS 813.030 and 813.240 or as otherwise provided by law and of gifts and grants made to the fund for carrying out the purposes of the fund. The moneys in the fund may be used only for the following purposes:

(1) To pay for providing treatment for individuals who enter diversion agreements under ORS 813.200 and who are found to be indigent. Payment for treatment under this subsection may include treatment for problem drinking, alcoholism or drug dependency. Payment shall be made as provided by the Director of [*Human Services*] **the Oregon Health Authority** by rule to agencies or organizations providing treatment.

(2) To pay for evaluation as provided by law of programs used for diversion agreements.

(3) To pay the cost of administration of the fund by the [*Director of Human Services*] **Oregon Health Authority**.

(4) To pay for materials, resources and training supplied by the [*Director of Human Services*] **authority** to those persons, organizations or agencies performing the diagnostic assessments or providing education or treatment to persons under diversion agreements.

(5) To pay for providing treatment programs required under ORS 813.020 and treatment or information programs required under ORS 471.432 for individuals who are found to be indigent.

(6) To pay for special services required to enable a person with a disability, or a person whose proficiency in the use of English is limited because of the person's national origin, to participate in treatment programs that are used for diversion agreements under ORS 813.200 or are required under ORS 813.020. This subsection applies:

(a) Whether or not the person is indigent; and

(b) Only to special services required solely because of the person's disability or limited proficiency in the use of English.

SECTION 1146. ORS 813.500 is amended to read:

813.500. (1) If a person's license is suspended for driving while under the influence of intoxicants under ORS 813.400 and the suspension period is determined by ORS 809.428 (2)(b) or (c), the Department of Transportation may only issue a hardship permit to the person under ORS 807.240 if the person, in addition to any requirement under ORS 807.240 and any applicable requirements under ORS 807.250 and 813.520:

(a) Is examined by the [*Director of Human Services or its designee*] **Oregon Health Authority** to determine whether the person has a problem condition involving alcohol, inhalants or controlled substances as described in ORS 813.040; and

(b) Complies with the requirements of this section.

(2) If the [*Director of Human Services*] **authority** determines that the person has a problem condition involving alcohol, inhalants or controlled substances, as described in ORS 813.040, the department may issue the permit to the person only if both the following apply:

(a) The person enrolled in a program for rehabilitation for alcoholism or drug dependence approved by the [*Director of Human Services*] **authority**.

(b) The [*Director of Human Services*] **authority** recommends, on the basis of the person's progress in the rehabilitation program, such reinstatement in writing to the department. If the [*Director of Human Services*] **authority** makes a recommendation under this paragraph, the [*Director of Human Services*] **authority** shall state specifically in the recommendation the times, places, routes and days of the week minimally necessary for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabilitation program or to obtain necessary medical treatment for the person or a member of the person's immediate family.

(3) If the [*Director of Human Services*] **authority** determines that the person does not have a problem condition involving alcohol, inhalants or controlled substances as described in ORS 813.040, the department may issue the permit to the person only if, in addition to any requirements under ORS 807.240, the person enters an alcohol or drug information program approved by the [*Director of Human Services*] **authority** and the department determines that issuance of a permit is appropriate. If the department issues a permit to a person described in this subsection, the department shall require, under ORS 807.240, that the person complete the program as a condition of retaining the permit.

SECTION 1147. ORS 815.260 is amended to read:

815.260. (1) A person commits the offense of operation of a recreational vehicle with unsealed disposal system if:

(a) The person has the use, possession or control of any vehicle or structure constructed for movement on highways;

(b) The vehicle or structure is equipped with a plumbing, sink or toilet fixture; and

(c) The disposal system for the vehicle or structure is unsealed or uncapped while the vehicle or structure is in any way or place of whatever nature open to the use of the public.

(2) For purposes of this section, a way or place open to the use of the public includes, but is not limited to, highways, roads, streets, alleys, lanes, trails, beaches, parks and recreational use areas owned or operated by the state, a county or local municipality for use by the general public.

(3) This section does not apply to disposal systems being discharged into or connected with a sewage disposal system approved by the [*Department of Human Services*] **Oregon Health Authority**.

(4) The offense described in this section, operation of a recreational vehicle with unsealed disposal system, is a Class C traffic violation.

SECTION 1148. ORS 820.330 is amended to read:

820.330. (1) A person commits the offense of failure to make, maintain and make available ambulance records if the person violates any of the following:

(a) When an ambulance is used in an emergency situation the driver of the ambulance, within 24 hours after such use, must cause to be made and must sign a record that complies with ORS 820.340.

(b) The owner of any ambulance must cause any record required by this section to be preserved for not less than seven years.

(c) Upon demand of any district attorney, the custodian of any record required under this section must make the record available to that district attorney for the purpose of investigating any alleged violation of ORS 820.320 by a driver of an ambulance.

(d) Upon demand of an authorized representative of the [*Department of Human Services*] **Oregon Health Authority**, the custodian of any record required under this section shall make the record available to the authorized representative who wishes to inspect the record for purposes of ascertaining identities of emergency medical technicians as defined in ORS 682.025.

(2) This section does not apply to any person or ambulance exempted by ORS 682.035 or 682.079 from regulation by the [*Department of Human Services*] **authority**.

(3) Authority of political subdivisions to regulate records of ambulances is limited under ORS 682.031.

(4) The offense described in this section, failure to make, maintain and make available ambulance records, is a Class B traffic violation.

SECTION 1149. ORS 820.360 is amended to read:

820.360. (1) A person commits the offense of illegal ambulance lighting equipment if the person drives or moves on any highway or owns and causes or knowingly permits to be driven or moved on any highway an ambulance that does not contain and is not at all times equipped with warning lights in proper condition and adjustment as required under ORS 820.350.

(2) This section does not apply to any person or ambulance exempted by ORS 682.035 or 682.079 from regulation by the [*Department of Human Services*] **Oregon Health Authority**.

(3) Authority of political subdivisions to regulate warning lights on ambulances is limited under ORS 682.031.

(4) The offense described under this section, illegal ambulance lighting equipment, is a Class C traffic violation.

SECTION 1150. ORS 820.380 is amended to read:

820.380. (1) A person commits the offense of illegal ambulance or emergency vehicle sirens if the person drives or moves on any highway or owns and causes or knowingly permits to be driven or moved on any highway an ambulance or emergency vehicle that does not contain and is not at all times equipped with sirens or other audible signals in proper conditions and adjustment as required under 820.370.

(2) This section does not apply to any ambulance or person operating or owning an ambulance if the ambulance or person is exempted by ORS 682.035 or 682.079 from regulation by the [*Department of Human Services*] **Oregon Health Authority**.

(3) Authority of political subdivisions to regulate sirens and other audible signals is limited under ORS 682.031.

(4) The offense described under this section, illegal ambulance or emergency vehicle sirens, is a Class C traffic violation.

SECTION 1151. ORS 830.110 is amended to read:

830.110. In addition to the powers and duties otherwise provided in this chapter, the State Marine Board shall have the power and duty to:

(1) Make all rules necessary to carry out the provisions of this chapter. The rules shall be made in accordance with ORS chapter 183.

(2) Devise a system of identifying numbers for boats, floating homes and boathouses. If an agency of the federal government has an overall system of identification numbering for boats within the United States, the system devised by the board shall conform with the federal system.

(3) Cooperate with state and federal agencies to promote uniformity of the laws relating to boating and their enforcement.

(4) Make contracts necessary to carry out the provisions of ORS 830.060 to 830.145, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830 to 830.870.

(5) Advise and assist county sheriffs and other peace officers in the enforcement of laws relating to boating.

(6) Study, plan and recommend the development of boating facilities throughout the state which will promote the safety and pleasure of the public through boating.

(7) Publicize the advantage of safe boating.

(8) Accept gifts and grants of property and money to be used to further the purposes of this chapter.

(9) Exempt from any provisions of this chapter any class of boats if it determines that the safety of persons and property will not be materially promoted by the applicability of those provisions to the class of boats. The board may not exempt from numbering any class of boats unless:

(a) The board determines that the numbering will not materially aid in their identification; and

(b) The secretary of the department of the federal government under which the United States Coast Guard is operating has exempted from numbering the same boats or classes of boats.

(10) Appoint and require the bonding of agents to issue a temporary permit to operate a boat. In addition to the prescribed fees, the agents may charge the following for their services in issuing the temporary permit:

(a) \$2.50 per transaction for calendar years 2008, 2009 and 2010;

(b) \$3.75 per transaction for calendar years 2011, 2012 and 2013; and

(c) Beginning in 2014, and every three years thereafter, the board shall issue an order revising the fee specified in paragraph (b) of this subsection on January 1, based on changes in the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. The board shall round the amount of the fee to the nearest half-dollar. The revised fee takes effect on January 1 and applies for the following three years.

(11) Publish and distribute to the interested public the boating laws of this state and resumes or explanations of those laws.

(12) Publish and distribute forms for any application required under this chapter and require the use of such forms.

(13) Make rules for the uniform navigational marking of the waters of this state. Such rules shall not conflict with markings prescribed by the United States Coast Guard. No political subdivision or person shall mark the waters of this state in any manner in conflict with the markings prescribed by the board.

(14) Make rules regarding marine toilets and their use consistent with the prevention and control of pollution of the waters of this state and not in conflict with the rules of the [*Department of Human Services*] **Oregon Health Authority** or the Environmental Quality Commission.

(15) Institute proceedings to enjoin unlawful obstructions injuring free navigation on the waters of this state.

(16) Make rules regulating water ski course markers, ski jumps and other special use devices placed in the waters of this state. Such rules may regulate the installation and use of the devices and may require a permit.

(17) Adopt rules necessary to carry out and enforce the provisions of ORS 830.950 and 830.955. The rules shall include but need not be limited to:

(a) The kinds of protective covering or physical barriers that are acceptable to be used between a submersible polystyrene device and the water.

(b) Guidelines for the use of submersible polystyrene devices for the repair or maintenance of existing docks or floats.

(18) Adopt rules providing for establishment of a Safe Boating Education Course to be made available to courts and law enforcement agencies within this state for use as a sentencing option for those individuals convicted of boating offenses. The board shall specify the content of the Safe Boating Education Course and shall prescribe procedures for making the course available to local courts and law enforcement agencies, including procedures for promptly notifying such courts whether individuals required to enroll in the course have taken and successfully passed the course. Such rules may provide for administration of the course through nonprofit organizations, such as the United States Coast Guard Auxiliary, United States Power Squadrons or similar groups.

(19) For purposes of ORS 830.175, 830.180, 830.185 and 830.195, in cooperation with the State Aviation Board, regulate boats that are seaplanes as provided in ORS 830.605 and 835.200.

SECTION 1152. Section 13, chapter 653, Oregon Laws 1991, as amended by section 233, chapter 900, Oregon Laws 2001, is amended to read:

Sec. 13. As used in sections 12 to 14, chapter 653, Oregon Laws 1991:

(1) "Facility approved by the [*Department of Human Services*] **Oregon Health Authority**" means a facility for which there is a license, permit, letter of agreement or other means by which the state officially accepts the treatment, storage, recycling, incineration or disposal method for radioactive material.

(2) "Radioactive material" means any radioactive waste or other radioactive material resulting from activities of the federal government, the United States Nuclear Regulatory Commission or its licensees or licensees of a state that has entered into an agreement under 42 U.S.C. 2021 and that satisfies the definition of low-level radioactive waste in the federal Low-Level Radioactive Waste Policy Act, 42 U.S.C. 2021b(9)(a), as of January 1, 1989. "Radioactive material" does not include naturally occurring radionuclides, uranium mill tailings or high-level radioactive waste.

SECTION 1153. Section 14, chapter 653, Oregon Laws 1991, as amended by section 234, chapter 900, Oregon Laws 2001, is amended to read:

Sec. 14. Notwithstanding any declaration by the federal government that certain radioactive material may be exempt from regulatory control or below regulatory concern, no radioactive material may be recycled, incinerated or disposed of in Oregon except at a facility approved by the [*Department of Human Services*] **Oregon Health Authority** specifically for the recycling, incineration or disposal of radioactive material.

SECTION 1154. Section 6, chapter 1059, Oregon Laws 1999, is amended to read:

Sec. 6. In carrying out its responsibilities under sections 2 to 9, **chapter 1059, Oregon Laws 1999**, [*of this 1999 Act,*] the State Department of Agriculture shall seek technical assistance as appropriate from at least the following entities:

(1) Oregon Department of Administrative Services;

(2) Department of Environmental Quality;

(3) State Department of Fish and Wildlife;

(4) State Forestry Department;

[*(5) Department of Human Services;*]

[*(6)*] **(5)** Occupational Safety and Health Division of the Department of Consumer and Business Services;

(6) Oregon Health Authority;

(7) Oregon Poison Center;

- (8) Pesticide Analytical and Response Center; and
- (9) Office of the State Fire Marshal.

SECTION 1155. Section 2, chapter 798, Oregon Laws 2001, as amended by section 281, chapter 14, Oregon Laws 2003, and section 4, chapter 248, Oregon Laws 2005, is amended to read:

Sec. 2. (1) The [*Department of Human Services*] **Oregon Health Authority** shall send the seismic safety surveys conducted pursuant to section 1 (1), chapter 798, Oregon Laws 2001, to the State Department of Geology and Mineral Industries. Notwithstanding section 1 (6), chapter 798, Oregon Laws 2001, if the State Department of Geology and Mineral Industries determines that a survey is not fully and properly completed, the State Department of Geology and Mineral Industries may refuse to accept the survey and may return the survey to the [*Department of Human Services*] **Oregon Health Authority** for correction or completion.

(2) The State Department of Geology and Mineral Industries may accept seismic safety surveys for buildings that are exempt under section 1 (5), chapter 798, Oregon Laws 2001, if the State Department of Geology and Mineral Industries determines that the surveys are fully and properly completed and are sufficiently similar to other surveys to be useful. The surveys accepted by the State Department of Geology and Mineral Industries under this subsection do not need to be surveys conducted by the [*Department of Human Services*] **Oregon Health Authority** or the State Department of Geology and Mineral Industries.

(3) The State Department of Geology and Mineral Industries shall use seismic safety surveys accepted under subsections (1) and (2) of this section or conducted pursuant to section 1 (2) or (3), chapter 798, Oregon Laws 2001, to make an initial evaluation of the seismic safety of each surveyed building.

(4) Subject to available funding and after consultation with the State Department of Geology and Mineral Industries, the acute inpatient care facility, fire department or fire district or law enforcement agency shall conduct such additional seismic safety evaluations of buildings as the facility, fire department or fire district or law enforcement agency considers to be necessary. The facility, fire department or fire district or law enforcement agency shall conduct the evaluations for life safety as set forth in the American Society of Civil Engineers Standard for Seismic Evaluation of Existing Buildings (SEI/ASCE 31-03), 2003 Edition, or in any later edition of that standard allowed for seismic safety evaluation use under a rule adopted by the State Department of Geology and Mineral Industries or using a stricter standard selected by the acute inpatient care facility, fire department or fire district or law enforcement agency that conducts the survey.

SECTION 1156. Section 2, chapter 665, Oregon Laws 2007, is amended to read:

Sec. 2. (1) The [*Department of Human Services*] **Oregon Health Authority** shall seek approval from the Centers for Medicare and Medicaid Services to operate a demonstration project to test alternative health care delivery systems through one or more pilot programs. Pilot programs may include, but are not limited to, programs testing advanced information technology applications, including decision supporting software that would improve health assessment data collection and decision-making.

(2) Technology or other methods tested under subsection (1) of this section shall be evaluated for:

- (a) Demonstration of health outcomes that are equal to or better than those the current delivery system provides;
- (b) Ease of use by patients and providers;
- (c) Extent of public acceptance; and
- (d) The cost of implementation and administration.

(3) The [*department*] **authority** may adopt rules necessary to implement the provisions of this section.

SECTION 1157. Section 3, chapter 838, Oregon Laws 2007, is amended to read:

Sec. 3. (1) There is established in the Office for Oregon Health Policy and Research the Oregon Health Care Acquired Infection Reporting Program. The program shall:

- (a) Provide useful and credible infection measures, specific to each health care facility, to consumers;
- (b) Promote quality improvement in health care facilities; and
- (c) Utilize existing quality improvement efforts to the extent practicable.
- (2) The office shall adopt rules to:
 - (a) Require health care facilities to report to the office health care acquired infection measures, including but not limited to health care acquired infection rates;
 - (b) Specify the health care acquired infection measures that health care facilities must report; and
 - (c) Prescribe the form, manner and frequency of reports of health care acquired infection measures by health care facilities.
- (3) In prescribing the form, manner and frequency of reports of health care acquired infection measures by health care facilities, to the extent practicable and appropriate to avoid unnecessary duplication of reporting by facilities, the office shall align the requirements with the requirements for health care facilities to report similar data to the [*Department of Human Services*] **Oregon Health Authority** and to the Centers for Medicare and Medicaid Services.
- (4) The office shall utilize, to the extent practicable and appropriate, a credible and reliable risk-adjusted methodology in analyzing the health care acquired infection measures reported by health care facilities.
- (5) The office shall provide health care acquired infection measures and related information to health care facilities in a manner that promotes quality improvement in the health care facilities.
- (6) The office shall adopt rules prescribing the form, manner and frequency for public disclosure of reported health care acquired infection measures. The office shall disclose updated information to the public no less frequently than every six months beginning January 1, 2010, and no less frequently than every calendar quarter beginning January 1, 2011.
- (7) Individually identifiable health information submitted to the office by health care facilities pursuant to this section may not be disclosed to, made subject to subpoena by or used by any state agency for purposes of any enforcement or regulatory action in relation to a participating health care facility.

SECTION 1158. Section 4, chapter 838, Oregon Laws 2007, is amended to read:

Sec. 4. (1) There is established the Health Care Acquired Infection Advisory Committee to advise the Administrator of the Office for Oregon Health Policy and Research regarding the Oregon Health Care Acquired Infection Reporting Program. The advisory committee shall consist of 16 members appointed by the administrator as follows:

- (a) Seven of the members shall be health care providers or their designees, including:
 - (A) A hospital administrator who has expertise in infection control and who represents a hospital that contains fewer than 100 beds;
 - (B) A hospital administrator who has expertise in infection control and who represents a hospital that contains 100 or more beds;
 - (C) A long term care administrator;
 - (D) A hospital quality director;
 - (E) A physician with expertise in infectious disease;
 - (F) A registered nurse with interest and involvement in infection control; and
 - (G) A physician who practices in an ambulatory surgical center and who has interest and involvement in infection control.
- (b) Nine of the members shall be individuals who do not represent health care providers, including:
 - (A) A consumer representative;
 - (B) A labor representative;
 - (C) An academic researcher;
 - (D) A health care purchasing representative;
 - (E) A representative of the [*Department of Human Services*] **Oregon Health Authority**;

- (F) A representative of the business community;
- (G) A representative of the Oregon Patient Safety Commission who does not represent a health care provider on the commission;
- (H) The state epidemiologist; and
- (I) A health insurer representative.

(2) The Administrator of the Office for Oregon Health Policy and Research and the advisory committee shall evaluate on a regular basis the quality and accuracy of the data collected and reported by health care facilities under section 3 [of this 2007 Act], **chapter 838, Oregon Laws 2007**, and the methodologies of the Office for Oregon Health Policy and Research for data collection, analysis and public disclosure.

(3) Members of the advisory committee are not entitled to compensation and shall serve as volunteers on the advisory committee.

(4) Each member of the advisory committee shall serve a term of two years.

(5) The advisory committee shall make recommendations to the administrator regarding:

(a) The health care acquired infection measures that health care facilities must report, which may include but are not limited to:

(A) Surgical site infections;

(B) Central line related bloodstream infections;

(C) Urinary tract infections; and

(D) Health care facility process measures designed to ensure quality and to reduce health care acquired infections;

(b) Methods for evaluating and quantifying health care acquired infection measures that align with other data collection and reporting methodologies of health care facilities and that support participation in other quality interventions;

(c) Requiring different reportable health care acquired infection measures for differently situated health care facilities as appropriate;

(d) A method to ensure that infections present upon admission to the health care facility are excluded from the rates of health care acquired infection disclosed to the public for the health care facility under sections 3 and 6 [of this 2007 Act], **chapter 838, Oregon Laws 2007**;

(e) Establishing a process for evaluating the health care acquired infection measures reported under section 3 [of this 2007 Act], **chapter 838, Oregon Laws 2007**, and for modifying the reporting requirements over time as appropriate;

(f) Establishing a timetable to phase in the reporting and public disclosure of health care acquired infection measures; and

(g) Procedures to protect the confidentiality of patients, health care professionals and health care facility employees.

[*(6) The Office for Oregon Health Policy and Research shall adopt rules implementing the Oregon Health Care Acquired Infection Reporting Program no later than July 1, 2008. Health care facilities shall begin reporting health care acquired infection measures under section 3 of this 2007 Act no later than January 1, 2009.*]

SECTION 1159. Section 2a, chapter 872, Oregon Laws 2007, is amended to read:

Sec. 2a. The Health Resources Commission shall:

(1) Conduct a review of available medical and behavioral health evidence on the treatment of pervasive developmental disorders.

(2) In conducting its review, work with the Public Employees' Benefit Board, the Health Services Commission, the [Department of Human Services] **Oregon Health Authority** and the Department of Education.

(3) Report its findings and recommendations to the Seventy-fifth Legislative Assembly in the manner provided in ORS 192.245.

NOTE: Section 1160 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 1161. Section 21, chapter 18, Oregon Laws 2008, is amended to read:

Sec. 21. (1) There is established a grant program to improve access to and the effectiveness of health care delivery for families.

(2) The goals of the program are to:

- (a) Improve preventive health services;
- (b) Increase access to appropriate, affordable and efficiently delivered primary care for families;
- (c) Provide new access to health care for children;
- (d) Explore alternative models for reimbursement of health care services; and
- (e) Collect information to allow for an evaluation of each grant-funded project.

(3) The [*Department of Human Services*] **Oregon Health Authority** shall award grants for two projects. One of the grants shall be awarded for a project that predominantly serves a rural area as defined by the Office of Rural Health.

(4) The [*department*] **authority** shall adopt rules in accordance with ORS 183.333 to:

- (a) Establish criteria for awarding grants based on the goals of the program.
- (b) Determine the amount of each grant.
- (c) Administer the program.

(5) The [*department*] **authority** shall award grants under this section for projects that:

(a) Create incentives for collaborative, community-based organizations to bring diverse stakeholders together to coordinate, communicate and improve access to health care for local residents of the community; and

(b) Improve health care delivery in the community by providing:

(A) Patient-centered care in which there is a sustained relationship between a patient and a culturally competent provider team and that utilizes patient-driven goals and evidence-based practices;

(B) Team-based care that takes advantage of nursing services, including care coordination, school-based health services, home visits, telephone triage and clinical case management, and that maximizes services during each patient visit;

(C) Coordinated care that links patients to comprehensive services in the community, including specialty care, mental health care, dental care, vision care and social services;

(D) Provider accessibility through the use of telephone and electronic mail, and the removal of transportation, language, cultural and other barriers to timely care; and

(E) Collaboration with the community that ensures that health-related interests and services are coordinated, psychosocial services are incorporated, resources are leveraged and maximized and assessments are conducted on health status, disparities and effectiveness of services.

(6) To be awarded grants, applicants must demonstrate the ability to leverage nonstate resources given the strengths and limitations of their geographic locations.

(7) Each project must include an evaluation component that accurately monitors and measures:

- (a) The impact of the project on the cost and quality of and access to health care; and
- (b) How the structure and operation of the organization reflects the interests of and is accountable to the diverse needs of the local community.

SECTION 1162. Section 2, chapter 31, Oregon Laws 2008, is amended to read:

Sec. 2. (1) A retailer may not sell or offer for sale, lease, sublet or otherwise distribute a children's product to consumers in this state if the children's product is:

(a) Subject to a recall notice issued by or in cooperation with the United States Consumer Product Safety Commission or a successor agency;

(b) The subject of a warning issued by the children's product manufacturer or the Consumer Product Safety Commission or a successor agency that the intended use of the children's product constitutes a health or safety hazard, unless the retailer has eliminated the hazard and made the children's product safe for sale, lease, subletting or distribution to consumers in strict compliance with standards and instructions provided in or related to the warning; or

(c) Subject to a declaration by the Director of [*Human Services*] **the Oregon Health Authority** under ORS 453.055 or under rules adopted by the [*Department of Human Services*] **Oregon Health Authority** that the children's product is a banned hazardous substance.

(2) A retailer shall subscribe to or arrange to receive recall notices and warnings issued by the Consumer Product Safety Commission and warnings issued by manufacturers from which the retailer receives children's products.

(3) A retailer shall dispose of a children's product identified in a recall notice or warning issued by or in cooperation with the Consumer Product Safety Commission or a successor agency in strict compliance with disposal instructions included with or related to the recall notice or warning.

(4) A retailer shall comply strictly with all return, repair, retrofitting, labeling or remediation instructions issued with or related to a warning issued by the Consumer Product Safety Commission or a successor agency, an agency of this state or the children's product manufacturer.

PATIENT CENTERED PRIMARY CARE HOME PROGRAM

SECTION 1163. (1) There is established in the Office for Oregon Health Policy and Research the patient centered primary care home program. Through this program, the office shall:

(a) Define core attributes of the patient centered primary care home to promote a reasonable level of consistency of services provided by patient centered primary care homes in this state. In defining core attributes related to ensuring that care is coordinated, the office shall focus on determining whether these patient centered primary care homes offer comprehensive primary care, including prevention and disease management services;

(b) Establish a simple and uniform process to identify patient centered primary care homes that meet the core attributes defined by the office under paragraph (a) of this subsection;

(c) Develop uniform quality measures that build from nationally accepted measures and allow for standard measurement of patient centered primary care home performance;

(d) Develop uniform quality measures for acute care hospital and ambulatory services that align with the patient centered primary care home quality measures developed under paragraph (c) of this subsection; and

(e) Develop policies that encourage the retention of, and the growth in the numbers of, primary care providers.

(2)(a) The Director of the Oregon Health Authority shall appoint an advisory committee to advise the office in carrying out subsection (1) of this section.

(b) The director shall appoint to the advisory committee 15 individuals who represent a diverse constituency and are knowledgeable about patient centered primary care home delivery systems and health care quality.

(c) Members of the advisory committee are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the office for the purposes of the advisory committee.

(d) The advisory committee shall use public input to guide policy development.

(3) The office will also establish, as part of the patient centered primary care home program, a learning collaborative in which state agencies, private health insurance carriers, third party administrators and patient centered primary care homes can:

(a) Share information about quality improvement;

(b) Share best practices that increase access to culturally competent and linguistically appropriate care;

(c) Share best practices that increase the adoption and use of the latest techniques in effective and cost-effective patient centered care;

(d) Coordinate efforts to develop and test methods to align financial incentives to support patient centered primary care homes;

(e) Share best practices for maximizing the utilization of patient centered primary care homes by individuals enrolled in medical assistance programs, including culturally specific and targeted outreach and direct assistance with applications to adults and children of racial, ethnic and language minority communities and other underserved populations;

(f) Coordinate efforts to conduct research on patient centered primary care homes and evaluate strategies to implement the patient centered primary care home to improve health status and quality and reduce overall health care costs; and

(g) Share best practices for maximizing integration to ensure that patients have access to comprehensive primary care, including preventative and disease management services.

(4) The Legislative Assembly declares that collaboration among public payers, private health carriers, third party purchasers and providers to identify appropriate reimbursement methods to align incentives in support of patient centered primary care homes is in the best interest of the public. The Legislative Assembly therefore declares its intent to exempt from state antitrust laws, and to provide immunity from federal antitrust laws, the collaborative and associated payment reforms designed and implemented under subsection (3) of this section that might otherwise be constrained by such laws. The Legislative Assembly does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state or federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the prices of specific levels of reimbursement for health care services.

(5) The office may contract with a public or private entity to facilitate the work of the learning collaborative described in subsection (3) of this section and may apply for, receive and accept grants, gifts, payments and other funds and advances, appropriations, properties and services from the United States, the State of Oregon or any governmental body or agency or from any other public or private corporation or person for the purpose of establishing and maintaining the collaborative.

SECTION 1164. (1) As funds are available, the Oregon Health Authority may provide reimbursement in the state's medical assistance program for services provided by patient centered primary care homes. If practicable, efforts to align financial incentives to support patient centered primary care homes for enrollees in medical assistance programs should be aligned with efforts of the learning collaborative described in section 1163 (3)(d) of this 2009 Act.

(2) The authority may reimburse patient centered primary care homes for interpretive services provided to people in the state's medical assistance programs if interpretive services qualify for federal financial participation.

(3) The authority shall require patient centered primary care homes receiving these reimbursements to report on quality measures described in section 1163 (1)(c) of this 2009 Act.

SECTION 1165. (1) The Oregon Health Authority, in collaboration with health insurers and purchasers of health plans including the Public Employees' Benefit Board, the Oregon Educators Benefit Board and other members of the patient centered primary care home learning collaborative and the patient centered primary care home program advisory committee, shall:

(a) Develop, test and evaluate strategies that reward enrollees in publicly funded health plans for:

(A) Receiving care through patient centered primary care homes that meet the core attributes established in section 1163 of this 2009 Act;

(B) Seeking preventative and wellness services;

(C) Practicing healthy behaviors; and

(D) Effectively managing chronic diseases.

(b) Develop, test and evaluate community-based strategies that utilize community health workers to enhance the culturally competent and linguistically appropriate health services provided by patient centered primary care homes in underserved communities.

(2) The authority shall focus on patients with chronic health conditions in developing strategies under this section.

(3) The authority, in collaboration with the Public Employees' Benefit Board and the Oregon Educators Benefit Board, shall establish uniform standards for contracts with health benefit plans providing coverage to public employees to promote the provision of patient centered primary care homes, especially for enrollees with chronic medical conditions, that are consistent with the uniform quality measures established by the Office for Oregon Health Policy and Research under section 1163 (1)(c) of this 2009 Act.

(4) The standards established under subsection (3) of this section may direct health benefit plans to provide incentives to primary care providers who serve vulnerable populations to partner with health-focused community-based organizations to provide culturally specific health promotion and disease management services.

SECTION 1166. (1) There is created in the Oregon Health Authority the Statewide Health Improvement Program to support evidence-based community efforts to prevent chronic disease and reduce the utilization of expensive and invasive acute treatments. The program is composed of activities described in subsection (2) of this section.

(2)(a) The authority may, subject to funding, award one or more grants to support community-based primary and secondary prevention activities focused on chronic diseases, and in line with the goals of the Statewide Health Improvement Program.

(b) To receive a grant under this subsection, an applicant must submit a proposal that:

(A) Includes outside funding of at least 10 percent of the total funding required;

(B) Is developed with community input, including the input of communities most affected by health disparities;

(C) Involves a range of community partners, including a range of multicultural community providers;

(D) Is evidence-based;

(E) Reduces health disparities among populations; and

(F) Contains performance criteria and measurable outcomes to demonstrate, including for communities most affected by health disparities as well as for individuals who are participating in the community-based primary and secondary activity proposal, improvements in population health status and health education and a reduction of chronic disease risk factors.

HEALTH INFORMATION TECHNOLOGY OVERSIGHT COUNCIL

SECTION 1167. As used in sections 1167 to 1173 of this 2009 Act:

(1) "Electronic health exchange" means the electronic movement of health-related information among health care providers according to nationally recognized interoperability standards.

(2) "Electronic health record" means an electronic record of an individual's health-related information that conforms to nationally recognized interoperability standards and that can be created, managed and consulted by authorized clinicians and staff across more than one health care provider.

(3) "Health care provider" or "provider" means a person who is licensed, certified or otherwise authorized by law in this state to administer health care in the ordinary course of business or in the practice of a health care profession.

(4) "Health information technology" means an information processing application using computer hardware and software for the storage, retrieval, sharing and use of health care information, data and knowledge for communication, decision-making, quality, safety and efficiency of a clinical practice. "Health information technology" includes, but is not limited to:

(a) An electronic health exchange.

- (b) An electronic health record.
- (c) A personal health record.
- (d) An electronic order from a provider for diagnosis, treatment or prescription drugs.
- (e) An electronic decision support system used to:
- (A) Assist providers in making clinical decisions by providing electronic alerts or reminders;
- (B) Improve compliance with best health care practices;
- (C) Promote regular screenings and other preventive health practices; or
- (D) Facilitate diagnoses and treatments.
- (f) Tools for the collection, analysis and reporting of information or data on adverse events, the quality and efficiency of care, patient satisfaction and other health care related performance measures.

(5) "Interoperability" means the capacity of two or more information systems to exchange information or data in an accurate, effective, secure and consistent manner.

(6) "Personal health record" means an individual's electronic health record that conforms to nationally recognized interoperability standards and that can be drawn from multiple sources while being managed, shared and controlled by the individual.

SECTION 1168. (1) There is established a Health Information Technology Oversight Council within the Oregon Health Authority, consisting of 11 members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of the Health Information Technology Oversight Council is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) A member of the Health Information Technology Oversight Council is not entitled to compensation for services as a member, but is entitled to expenses as provided in ORS 292.495 (2). Claims for expenses incurred in performing the functions of the council shall be paid out of funds appropriated to the Oregon Health Authority for that purpose.

SECTION 1169. Notwithstanding the term of office specified by section 1168 of this 2009 Act, of the members first appointed to the Health Information Technology Oversight Council:

- (1) Two shall serve for terms ending January 1, 2011.
- (2) Three shall serve for terms ending January 1, 2012.
- (3) Three shall serve for terms ending January 1, 2013.
- (4) Three shall serve for terms ending January 1, 2014.

SECTION 1170. The members of the Health Information Technology Oversight Council must be residents of this state from both the public and private sectors who are well informed in the areas of health information technology, health care delivery, health policy and health research. The membership must reflect the geographic diversity of Oregon and must include consumers and providers of health care and privacy and information technology experts.

SECTION 1171. The duties of the Health Information Technology Oversight Council are to:

- (1) Set specific health information technology goals and develop a strategic health information technology plan for this state.
- (2) Monitor progress in achieving the goals established in subsection (1) of this section and provide oversight for the implementation of the strategic health information technology plan.
- (3) Maximize the distribution of resources expended on health information technology across this state.

(4) Create and provide oversight for a public-private purchasing collaborative or alternative mechanism to help small health care practices, primary care providers, rural providers and providers whose practices include a large percentage of medical assistance recipients to obtain affordable rates for high-quality electronic health records hardware, software and technical support for planning, installation, use and maintenance of health information technology.

(5) Identify and select the industry standards for all health information technology promoted by the purchasing collaborative described in subsection (4) of this section, including standards for:

(a) Selecting, supporting and monitoring health information technology vendors, hardware, software and technical support services; and

(b) Ensuring that health information technology applications have appropriate privacy and security controls and that data cannot be used for purposes other than patient care or as otherwise allowed by law.

(6) Enlist and leverage community resources to advance the adoption of health information technology.

(7) Educate the public and health care providers on the benefits and risks of information technology infrastructure investment.

(8) Coordinate health care sector activities that move the adoption of health information technology forward and achieve health information technology interoperability.

(9) Support and provide oversight for efforts by the Oregon Health Authority to implement a personal health records bank for medical assistance recipients and assess its potential to serve as a fundamental building block for a statewide health information exchange that:

(a) Ensures that patients' health information is available and accessible when and where they need it;

(b) Applies only to patients who choose to participate in the exchange; and

(c) Provides meaningful remedies if security or privacy policies are violated.

(10) Determine a fair, appropriate method to reimburse providers for their use of electronic health records to improve patient care, starting with providers whose practices consist of a large percentage of medical assistance recipients.

(11) Determine whether to establish a health information technology loan program and if so, to implement the program.

SECTION 1172. (1) The Governor shall appoint one of the members of the Health Information Technology Oversight Council as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the performance of the functions of those offices as the Governor determines.

(2) A majority of the members of the council constitutes a quorum for the transaction of business.

(3) The council shall meet at least quarterly at a place, day and hour determined by the council. The council may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the council.

SECTION 1173. In accordance with applicable provisions of ORS chapter 183, the Health Information Technology Oversight Council may adopt rules necessary for the administration of the laws that the council is charged with administering.

HEALTHCARE WORKFORCE DATA

SECTION 1174. (1) The Office for Oregon Health Policy and Research shall create and maintain a healthcare workforce database that will provide information upon request to state agencies and to the Legislative Assembly about Oregon's healthcare workforce, including:

- (a) Demographics, including race and ethnicity.
- (b) Practice status.
- (c) Education and training background.
- (d) Population growth.
- (e) Economic indicators.

(f) Incentives to attract qualified individuals, especially those from underrepresented minority groups, to healthcare education.

(2) The Administrator for the Office for Oregon Health Policy and Research may contract with a private or public entity to establish and maintain the database and to analyze the data. The office is not subject to the requirements of ORS chapters 279A, 279B and 279C with respect to the contract.

SECTION 1175. (1) As used in this section, “healthcare workforce regulatory board” means the:

- (a) Occupational Therapy Licensing Board;
- (b) Oregon Medical Board;
- (c) Oregon State Board of Nursing;
- (d) Oregon Board of Dentistry;
- (e) Physical Therapist Licensing Board;
- (f) State Board of Pharmacy; and
- (g) Board of Examiners of Licensed Dietitians.

(2)(a) An applicant for a license from a healthcare workforce regulatory board or renewal of a license by a healthcare workforce regulatory board shall provide the information prescribed by the Office for Oregon Health Policy and Research pursuant to subsection (3) of this section.

(b) Except as provided in subsection (4) of this section, a healthcare workforce regulatory board may not approve a subsequent application for a license or renewal of a license until the applicant provides the information.

(3) The Administrator for the Office for Oregon Health Policy and Research shall collaborate with the healthcare workforce regulatory boards to adopt rules for the manner, form and content for reporting, and the information that must be provided to a healthcare workforce regulatory board under subsection (2) of this section, which may include:

- (a) Demographics, including race and ethnicity.
- (b) Education information.
- (c) License information.
- (d) Employment information.
- (e) Primary and secondary practice information.
- (f) Anticipated changes in the practice.
- (g) Languages spoken.

(4)(a) A healthcare workforce regulatory board shall report healthcare workforce information collected under subsection (2) of this section to the Office for Oregon Health Policy and Research.

(b) A healthcare workforce regulatory board shall keep confidential and not release personally identifiable data collected under this section for a person licensed, registered or certified by a board. This paragraph does not apply to the release of information to a law enforcement agency for investigative purposes or to the release to the Office for Oregon Health Policy and Research for state health planning purposes.

(5) The requirements of subsection (2) of this section apply to an applicant for issuance or renewal of a license who is or who is applying to become:

- (a) An occupational therapist or certified occupational therapy assistant as defined in ORS 675.210;
- (b) A physician as defined in ORS 677.010;
- (c) A physician assistant as defined in ORS 677.495;

- (d) A nurse or nursing assistant licensed or certified under ORS 678.010 to 678.410;
- (e) A dentist or dental hygienist as defined in ORS 679.010;
- (f) A physical therapist or physical therapist assistant as defined in ORS 688.010;
- (g) A pharmacist or pharmacy technician as defined in ORS 689.005; or
- (h) A licensed dietitian, as defined in ORS 691.405.

(6) A healthcare workforce regulatory board may adopt rules as necessary to perform the board's duties under this section.

(7) In addition to licensing fees that may be imposed by a healthcare workforce regulatory board, the Oregon Health Policy Board shall establish fees to be paid by applicants for issuance or renewal of licenses reasonably calculated to reimburse the actual cost of obtaining or reporting information as required by subsection (2) of this section.

SECTION 1176. Sections 1174 and 1175 of this 2009 Act become operative on January 1, 2010.

SECTION 1177. A healthcare workforce regulatory board, as defined in section 1175 of this 2009 Act, and the Office for Oregon Health Policy and Research may take any action prior to the operative date specified in section 1176 of this 2009 Act that is necessary to enable a board or the office to exercise, on and after the operative date specified in section 1176 of this 2009 Act, all the duties, functions and powers conferred on a board and the office by sections 1174 and 1175 of this 2009 Act.

SECTION 1178. Section 1175 of this 2009 Act applies to an application for a license or license renewal filed on or after the operative date specified in section 1176 of this 2009 Act.

HEALTH CARE GUIDELINES

SECTION 1179. (1) The Health Resources Commission established by ORS 442.580 shall conduct comparative effectiveness research of new and existing health treatments, procedures and services selected in accordance with ORS 442.583. The commission may conduct the research by comprehensive review of the comparative effectiveness research undertaken by recognized state, national or international entities. The commission shall disseminate the research findings to health care consumers, providers and third-party payers and to other interested stakeholders.

(2) The Health Services Commission established by ORS 414.715 shall develop or identify and shall disseminate evidence-based health care guidelines for use by providers, consumers and purchasers of health care in Oregon.

(3) The Office for Oregon Health Policy and Research shall ensure that the work of the Health Services Commission and the Health Resources Commission under this section is aligned and coordinated.

(4) The Public Employees' Benefit Board, the Oregon Educators Benefit Board, the Department of Corrections and the Oregon Health Authority shall vigorously pursue health care purchasing strategies that adopt the research findings described in subsection (1) of this section and the evidence-based health care guidelines described in subsection (2) of this section.

(5) Public bodies, as defined in ORS 174.109, that purchase health care or provide health services directly shall adopt the research findings described in subsection (1) of this section and the evidence-based health care guidelines described in subsection (2) of this section.

SECTION 1180. ORS 442.584 is amended to read:

442.584. (1) All applicants for a certificate of need for any of the technologies or services under study by the Health Resources Commission shall provide the information specified in paragraphs (a) to (f) of this subsection. This information may be utilized by the commission in performing its functions under ORS 442.583 and section 1179 of this 2009 Act. The information shall include:

(a) The estimated number of patients needing the service or procedure who are not currently being served and who cannot be served by existing programs in the service area.

(b) The anticipated number of procedures to be performed per year for a five-year period commencing on the date the service is started or the technology is acquired.

(c) The anticipated number of patients to be served by the applicant, based on the incidence in the population to be served or the conditions for which the technology or service will be used.

(d) Clinical indications for ordering use of the technology or service, with appropriate references to relevant literature.

(e) An estimate of the treatment decisions likely to result from use of the technology or service.

(f) A proposed method for collecting data on the patients served, costs engendered directly or indirectly and the health outcomes resulting from use of the technology or service.

(2) An application shall be decided in accordance with the statutes and rules in effect at the time of filing of a completed letter of intent for that application.

PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT REGISTRY

SECTION 1181. Sections 1181 to 1189 of this 2009 Act shall be known and may be cited as the Oregon POLST Registry Act.

SECTION 1182. As used in sections 1181 to 1189 of this 2009 Act:

(1) “Authorized user” means a person authorized by the Oregon Health Authority to provide information to or receive information from the POLST registry.

(2) “Life-sustaining treatment” means any medical procedure, pharmaceutical, medical device or medical intervention that maintains life by sustaining, restoring or supplanting a vital function. “Life-sustaining treatment” does not include routine care necessary to sustain patient cleanliness and comfort.

(3) “Nurse practitioner” has the meaning given that term in ORS 678.010.

(4) “Physician” has the meaning given that term in ORS 677.010.

(5) “Physician assistant” has the meaning given that term in ORS 677.495.

(6) “POLST” means a physician order for life-sustaining treatment signed by a physician, nurse practitioner or physician assistant.

(7) “POLST registry” means the registry established in section 1184 of this 2009 Act.

SECTION 1183. Nothing in sections 1181 to 1189 of this 2009 Act is intended to require an individual to have a POLST or to require a health professional to authorize or execute a POLST. A POLST may be revoked at any time.

SECTION 1184. (1) The Oregon Health Authority shall establish and operate a statewide registry for the collection and dissemination of physician orders for life-sustaining treatment to help ensure that medical treatment preferences for an individual nearing the end of the individual’s life are honored.

(2) The authority shall adopt rules for the registry, including but not limited to rules that:

(a) Require submission of the following documents to the registry, unless the patient has requested to opt out of the registry:

(A) A copy of each POLST;

(B) A copy of a revised POLST; and

(C) Notice of any known revocation of a POLST;

(b) Prescribe the manner for submitting information described in paragraph (a) of this subsection;

(c) Require the release of registry information to authorized users for treatment purposes;

(d) Authorize notification by the registry to specified persons of the receipt, revision or revocation of a POLST; and

(e) Establish procedures to protect the accuracy and confidentiality of information submitted to the registry.

(3) The authority may permit qualified researchers to access registry data. If the authority permits qualified researchers to have access to registry data, the authority shall adopt rules governing the access to data that shall include but need not be limited to:

- (a) The process for a qualified researcher to request access to registry data;
- (b) The types of data that a qualified researcher may be provided from the registry; and
- (c) The manner by which a researcher must protect registry data obtained under this subsection.

(4) The authority may contract with a private or public entity to establish or maintain the registry, and such contract is exempt from the requirements of ORS chapters 279A, 279B and 279C.

SECTION 1185. Nothing in sections 1181 to 1189 of this 2009 Act requires the Oregon Health Authority to:

- (1) Prescribe the form or content of a POLST;
- (2) Disseminate forms to be used for a POLST;
- (3) Educate the public about POLSTs, generally; or
- (4) Train health care providers about POLSTs.

SECTION 1186. (1) There is established the Oregon POLST Registry Advisory Committee to advise the Oregon Health Authority regarding the implementation, operation and evaluation of the POLST registry.

(2) The members of the Oregon POLST Registry Advisory Committee shall be appointed by the Director of the Oregon Health Authority and shall include, at a minimum:

- (a) A health professional with extensive experience and leadership in POLST issues;
- (b) A physician who is a supervising physician, as defined in ORS 682.025, for emergency medical technicians and who has extensive experience and leadership in POLST issues;
- (c) A representative from the hospital community with extensive experience and leadership in POLST issues;
- (d) A representative from the long term care community with extensive experience and leadership in POLST issues;
- (e) A representative from the hospice community with extensive experience and leadership in POLST issues;
- (f) An emergency medical technician actively involved in providing emergency medical services; and
- (g) Two members of the public with active interest in end-of-life treatment preferences, at least one of whom represents the interests of minorities.

(3) The Director of the Emergency Medical Services and Trauma Systems Program within the Oregon Health Authority, or a designee of the director, shall serve as a voting ex officio member of the committee.

(4) The Director of the Oregon Health Authority may appoint additional members to the committee.

(5) The committee shall meet at least four times per year, at times and places specified by the Director of the Oregon Health Authority.

(6) The Oregon Health Authority shall provide staff support for the committee.

(7) Except for the Director of the Emergency Medical Services and Trauma Systems Program, a member of the committee shall serve a term of two years. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on January 2 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Director of the Oregon Health Authority shall make an appointment to become immediately effective for the unexpired term.

(8) The Director of the Oregon Health Authority, or a designee of the director, shall consult with the committee in drafting rules on the implementation, operation and evaluation of the POLST registry.

SECTION 1187. Notwithstanding the term of office specified in section 1186 of this 2009 Act, of the members described in section 1186 (2) of this 2009 Act who are first appointed to the Oregon POLST Registry Advisory Committee:

- (1) At least two shall serve for terms ending January 1, 2011.
- (2) At least three shall serve for terms ending January 1, 2012.
- (3) At least three shall serve for terms ending January 1, 2013.

SECTION 1188. Except as provided in section 1184 of this 2009 Act, all information collected or developed by the POLST registry that identifies or could be used to identify a patient, health care provider or facility is confidential and is not subject to civil or administrative subpoena or to discovery in a civil action, including but not limited to a judicial, administrative, arbitration or mediation proceeding.

SECTION 1189. Any person reporting information to the POLST registry or acting on information obtained from the POLST registry in good faith is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the reporting of information to the POLST registry or acting on information obtained from the POLST registry.

SECTION 1190. ORS 163.206 is amended to read:
163.206. ORS 163.200 and 163.205 do not apply:

(1) To a person acting pursuant to a court order, an advance directive or a power of attorney for health care pursuant to ORS 127.505 to 127.660 or a POLST, as defined in section 1182 of this 2009 Act;

(2) To a person withholding or withdrawing life-sustaining procedures or artificially administered nutrition and hydration pursuant to ORS 127.505 to 127.660;

(3) When a competent person refuses food, physical care or medical care;

(4) To a person who provides an elderly person or a dependent person who is at least 15 years of age with spiritual treatment through prayer from a duly accredited practitioner of spiritual treatment as provided in ORS 124.095, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which the elderly or dependent person is a member or an adherent; or

(5) To a duly accredited practitioner of spiritual treatment as provided in ORS 124.095.

UNIFORM STANDARDS FOR HEALTH INSURERS

SECTION 1191. Sections 1192, 1194 and 1195 of this 2009 Act are added to and made a part of the Insurance Code.

SECTION 1192. The Director of the Department of Consumer and Business Services may establish by rule uniform standards applicable to health insurers licensed by the Department of Consumer and Business Services that incorporate the standards developed by the Office for Oregon Health Policy and Research pursuant to section 1193 of this 2009 Act.

SECTION 1193. (1) The Office for Oregon Health Policy and Research shall convene a stakeholder workgroup to develop uniform standards for health insurers licensed in this state, including but not limited to standards for:

- (a) Eligibility verification.
- (b) Health care claims processes.
- (c) Payment and remittance advice.

(2) The Office for Oregon Health Policy and Research shall report on progress toward the development of uniform standards under subsection (1) of this section to the appropriate interim committee of the Legislative Assembly no later than October 1, 2009.

DATA REPORTING BY INSURANCE CARRIERS

SECTION 1194. “Covered life” means a subscriber, policyholder, certificate holder, spouse, dependent child or any other individual insured under an insurance policy or whose benefits are administered by a third party administrator licensed under ORS 744.702.

SECTION 1195. (1) A carrier offering a health benefit plan as defined in ORS 743.730 and a third party administrator licensed under ORS 744.702 shall annually submit to the Department of Consumer and Business Services, in a form and manner prescribed by the department, data concerning the number of covered lives of the carrier or third party administrator, reported by line of business and by zip code.

(2) The department shall aggregate the data collected under subsection (1) of this section and may publish reports on the number of covered lives in Oregon, by line of business and by region.

CAPITAL PROJECT REPORTING

SECTION 1196. Sections 1197, 1198 and 1199 of this 2009 Act are added to and made a part of ORS chapter 442.

SECTION 1197. As used in this section and sections 1198 and 1199 of this 2009 Act:

(1)(a) “Capital project” means:

(A) The construction, development, purchase, renovation or any construction expenditure by or on behalf of a reporting entity, for which the cost:

- (i) For type A hospitals, exceeds five percent of gross revenue.
- (ii) For type B hospitals, exceeds five percent of gross revenue.
- (iii) For DRG hospitals, exceeds 1.75 percent of gross revenue.
- (iv) For ambulatory surgery centers, exceeds \$2 million.

(B) The purchase or lease of, or other comparable arrangement for, a single piece of diagnostic or therapeutic equipment for which the cost or, in the case of a donation, the value exceeds \$1 million. The acquisition of two or more pieces of diagnostic or therapeutic equipment that are necessarily interdependent in the performance of ordinary functions shall be combined in calculating the cost or value of the transaction.

(b) “Capital project” does not include a project financed entirely through charitable fundraising.

(2) “DRG hospital” means a hospital that is not a type A or type B hospital and that receives Medicare reimbursement based upon diagnostic related groups.

(3) “Gross revenue” has the meaning given that term in ORS 442.015.

(4) “Reporting entity” includes the following if licensed pursuant to ORS 441.015:

- (a) A type A hospital as described in ORS 442.470.
- (b) A type B hospital as described in ORS 442.470.
- (c) A DRG hospital.
- (d) An ambulatory surgical center as defined in ORS 442.015.

SECTION 1198. The Office for Oregon Health Policy and Research may adopt rules requiring reporting entities within the state to publicly report proposed capital projects. Rules adopted under this section must:

(1) Require a reporting entity to establish on the homepage of its website a prominently labeled link to information about proposed or pending capital projects. The information posted must include but is not limited to a report of the community benefit for the project, its estimated cost and a means for interested persons to submit comments. When a reporting entity posts the information required under this subsection, the reporting entity must notify the Office for Oregon Health Policy and Research of the posting in the manner prescribed by the office.

(2) If a reporting entity does not have a website, require the reporting entity to publish notice of the proposed capital project in a major newspaper or online equivalent serving the region in which the proposed capital project will be located. The notice must include but is

not limited to a report of the community benefit for the project, its estimated cost and a means for interested persons to submit comments. When a reporting entity publishes the information required under this subsection, the reporting entity must notify the Office for Oregon Health Policy and Research of the publication in the manner prescribed by the office.

(3) Establish a publicly available resource for information collected under this section.

SECTION 1199. (1) Any reporting entity that fails to report as required by rules of the Office for Oregon Health Policy and Research adopted pursuant to section 1198 of this 2009 Act may be subject to a civil penalty.

(2) The Administrator of the Office for Oregon Health Policy and Research shall adopt a schedule of penalties, not to exceed \$500 per day of violation, that are based on the severity of the violation.

(3) Civil penalties imposed under this section shall be imposed as provided in ORS 183.745.

(4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and conditions as the administrator considers proper and consistent with the public health and safety.

(5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose of rate determination or for reimbursement by a third party payer.

HEALTH CARE DATA REPORTING

SECTION 1200. As used in this section and section 1201 of this 2009 Act, “reporting entity” means:

(1) An insurer as defined in ORS 731.106 or fraternal benefit society as described in ORS 748.106 required to have a certificate of authority to transact health insurance business in this state.

(2) A health care service contractor as defined in ORS 750.005 that issues medical insurance in this state.

(3) A third party administrator required to obtain a license under ORS 744.702.

(4) A pharmacy benefit manager or fiscal intermediary, or other person that is by statute, contract or agreement legally responsible for payment of a claim for a health care item or service.

(5) A prepaid managed care health services organization as defined in ORS 414.736.

(6) An insurer providing coverage funded under Part A, Part B or Part D of Title XVIII of the Social Security Act, subject to approval by the United States Department of Health and Human Services.

SECTION 1201. (1) The Administrator of the Office for Oregon Health Policy and Research shall establish and maintain a program that requires reporting entities to report health care data for the following purposes:

(a) Determining the maximum capacity and distribution of existing resources allocated to health care.

(b) Identifying the demands for health care.

(c) Allowing health care policymakers to make informed choices.

(d) Evaluating the effectiveness of intervention programs in improving health outcomes.

(e) Comparing the costs and effectiveness of various treatment settings and approaches.

(f) Providing information to consumers and purchasers of health care.

(g) Improving the quality and affordability of health care and health care coverage.

(h) Assisting the administrator in furthering the health policies expressed by the Legislative Assembly in ORS 442.025.

(i) Evaluating health disparities, including but not limited to disparities related to race and ethnicity.

(2) The Administrator of the Office for Oregon Health Policy and Research shall prescribe by rule standards that are consistent with standards adopted by the Accredited

Standards Committee X12 of the American National Standards Institute, the Centers for Medicare and Medicaid Services and the National Council for Prescription Drug Programs that:

(a) Establish the time, place, form and manner of reporting data under this section, including but not limited to:

(A) Requiring the use of unique patient and provider identifiers;

(B) Specifying a uniform coding system that reflects all health care utilization and costs for health care services provided to Oregon residents in other states; and

(C) Establishing enrollment thresholds below which reporting will not be required.

(b) Establish the types of data to be reported under this section, including but not limited to:

(A) Health care claims and enrollment data used by reporting entities and paid health care claims data;

(B) Reports, schedules, statistics or other data relating to health care costs, prices, quality, utilization or resources determined by the administrator to be necessary to carry out the purposes of this section; and

(C) Data related to race, ethnicity and primary language collected in a manner consistent with established national standards.

(3) Any third party administrator that is not required to obtain a license under ORS 744.702 and that is legally responsible for payment of a claim for a health care item or service provided to an Oregon resident may report to the Administrator of the Office for Oregon Health Policy and Research the health care data described in subsection (2) of this section.

(4) The Administrator of the Office for Oregon Health Policy and Research shall adopt rules establishing requirements for reporting entities to train providers on protocols for collecting race, ethnicity and primary language data in a culturally competent manner.

(5) The Administrator of the Office for Oregon Health Policy and Research shall use data collected under this section to provide information to consumers of health care to empower the consumers to make economically sound and medically appropriate decisions. The information must include, but not be limited to, the prices and quality of health care services.

(6) The Administrator of the Office for Oregon Health Policy and Research may contract with a third party to collect and process the health care data reported under this section. The contract must prohibit the collection of Social Security numbers and must prohibit the disclosure or use of the data for any purpose other than those specifically authorized by the contract. The contract must require the third party to transmit all data collected and processed under the contract to the Office for Oregon Health Policy and Research.

(7) The Administrator of the Office for Oregon Health Policy and Research shall facilitate a collaboration between the Department of Human Services, the Oregon Health Authority, the Department of Consumer and Business Services and interested stakeholders to develop a comprehensive health care information system using the data reported under this section and collected by the office under ORS 442.120 and 442.400 to 442.463. The administrator, in consultation with interested stakeholders, shall:

(a) Formulate the data sets that will be included in the system;

(b) Establish the criteria and procedures for the development of limited use data sets;

(c) Establish the criteria and procedures to ensure that limited use data sets are accessible and compliant with federal and state privacy laws; and

(d) Establish a time frame for the creation of the comprehensive health care information system.

(8) Information disclosed through the comprehensive health care information system described in subsection (7) of this section:

(a) Shall be available, when disclosed in a form and manner that ensures the privacy and security of personal health information as required by state and federal laws, as a resource

to insurers, employers, providers, purchasers of health care and state agencies to allow for continuous review of health care utilization, expenditures and performance in this state;

(b) Shall be available to Oregon programs for quality in health care for use in improving health care in Oregon, subject to rules prescribed by the Administrator of the Office for Oregon Health Policy and Research conforming to state and federal privacy laws or limiting access to limited use data sets;

(c) Shall be presented to allow for comparisons of geographic, demographic and economic factors and institutional size; and

(d) May not disclose trade secrets of reporting entities.

(9) The collection, storage and release of health care data and other information under this section is subject to the requirements of the federal Health Insurance Portability and Accountability Act.

SECTION 1202. (1) Any reporting entity that fails to report as required in section 1201 of this 2009 Act or rules of the Office for Oregon Health Policy and Research adopted pursuant to section 1201 of this 2009 Act may be subject to a civil penalty.

(2) The Administrator of the Office for Oregon Health Policy and Research shall adopt a schedule of penalties not to exceed \$500 per day of violation, determined by the severity of the violation.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and conditions as the administrator considers proper and consistent with the public health and safety.

(5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose of rate determination or for reimbursement by a third-party payer.

NOTE: Section 1203 was deleted by amendment. Subsequent sections were not renumbered.

REPEALS

SECTION 1204. (1) ORS 414.019, 414.021, 414.022, 414.023, 414.024, 414.031, 414.032, 414.036, 414.038, 414.039, 414.085, 414.107, 414.660, 414.670, 414.744, 430.180, 430.190, 442.035, 442.045, 442.057 and 445.270 and sections 10 and 13, chapter 810, Oregon Laws 2003, are repealed.

(2) ORS 735.706 is repealed on January 2, 2011.

UNIT CAPTIONS

SECTION 1205. The unit captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

EMERGENCY CLAUSE

SECTION 1206. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House June 8, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 11, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State